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EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, in Ukraine

EXPLANATORY MEMORANDUM

1. Context of the proposal

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

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation') in the proceeding concerning imports of certain ironing boards originating in, *inter alia*, Ukraine.

- **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 452/2007² imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine.

- **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 foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 109, 26.4.2007, p. 12.

3. Legal elements of the proposal

- **Summary of the proposed action**

On 9 April 2009, the European Commission (the Commission) initiated a partial interim review limited to the dumping aspects of the anti-dumping measures applicable to imports of ironing boards originating in Ukraine imposed by Council Regulation (EC) No 452/2007 of 23 April 2007.

The dumping margin found in the investigation that led to Council Regulation (EC) No 452/2007 was 9,9 %. The review investigation found, for the sole producer of ironing boards in Ukraine, that following a restructuring of its sales channels, its dumping margin was 7,0 %.

The review investigation thus concluded that the circumstances on the basis of which measures had been established have changed and that the new circumstances are of a lasting nature. The anti-dumping measures imposed on imports of ironing boards originating, *inter alia*, in Ukraine should therefore be amended.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation amending the measures in force. The Regulation should be published in the Official Journal no later than 8 July 2010.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and in particular Article 11(3) thereof.

- **Subsidiarity principle**

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

- **Proportionality principle**

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

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision. Indication of how financial and administrative burden falling upon the Union, 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 instrument: Council Regulation.

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 Union budget.

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amending Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, in Ukraine

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 Community³ ('the basic Regulation'), and in particular Article 11(3) thereof,

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

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) The Council, by Regulation (EC) No 452/2007⁴ ('the original Regulation'), imposed a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, in Ukraine. The measures consist of an *ad valorem* duty at a rate of 9,9 %.

1.2. Request for a review

(2) In August 2008, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation ('the interim review'). The request was completed in December 2008. The request, limited in scope to the examination of dumping, was lodged by an exporting producer from Ukraine, Eurogold Industries Ltd. ('the applicant' or 'EGI'). The applicant had cooperated in the investigation which led to the findings and conclusions laid down in the original Regulation ('the original investigation'). The anti-dumping duty applicable to the applicant, which is the only known exporting producer of the product concerned in Ukraine, is 9,9 %.

(3) In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature.

³ OJ L 343, 22.12.2009, p. 51.

⁴ OJ L 109, 26.4.2007, p. 12.

The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset dumping.

1.3. Initiation of a review

- (4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as EGI is concerned. The Commission published a notice of initiation on 9 April 2009 in the *Official Journal of the European Union*⁵ ('Notice of initiation') and commenced an investigation.

1.4. Product concerned and like product

- (5) The product concerned by the interim review is the same as that in the original investigation, i.e. ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest, originating in Ukraine, 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.
- (6) The product produced and sold in Ukraine and that exported to the Union, have the same basic physical and technical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

1.5. Parties concerned

- (7) The Commission officially advised the Union industry, the applicant and the authorities of the exporting country of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to be heard.
- (8) The Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant:
- Eurogold Industries Ltd., Zhitomir, Ukraine
 - and its related company Eurogold Service Zumbühl & Co., Zug in Switzerland ('EGS').

1.6. Investigation period

- (9) The investigation covered the period from 1 January 2008 to 31 December 2008 ('the investigation period' or 'IP').

⁵ OJ C 85, 9.4.2009, p. 28.

2. RESULTS OF THE INVESTIGATION

2.1. Normal value

- (10) For the determination of normal value, it was first established whether EGI's total volume of domestic sales of the like product to independent customers was representative in comparison with its total volume of export sales to the Union. In accordance with Article 2(2) of the basic Regulation domestic sales are considered to be representative when the total domestic sales volume is at least 5 % of the total volume of sales of the product concerned to the Union. It was found that the overall sales by EGI of the like product on the domestic market were representative.
- (11) For each product type sold by EGI on its domestic market and found to be directly comparable with the product type sold for export to the Union, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total sales volume of the comparable product type exported to the Union.
- (12) It was also examined whether the domestic sales of each product type could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable for each exported type of the product concerned during the IP.
- (13) For those product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the type in question, irrespective of whether those sales were profitable or not.
- (14) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the IP.
- (15) Wherever domestic prices of a particular product type sold by EGI could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.
- (16) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) *chapeau* of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by EGI.
- (17) Following disclosure of the findings, EGI claimed that the percentage rate for selling, general and administrative costs, which was used when constructing normal value, did not correspond to that in respect of domestic sales made in the ordinary course of trade

and that, consequently, certain constructed normal values were overstated in this respect.

- (18) The claim was examined, but it was found to have no basis since the percentage rate for selling, general and administrative costs used is that reported for domestic sales and is the same irrespective of whether or not sales are made in the ordinary course of trade, since it is expressed as a percentage on turnover. The claim is therefore rejected.

2.2. Export price

- (19) EGI made export sales to the Union either directly to independent customers or through its related company EGS, located in Switzerland.
- (20) Where export sales to the Union were made directly to independent customers in the Union, export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.
- (21) Where export sales to the Union were made through the related company, EGS, which performed all import functions in relation to the goods entering into free circulation in the Union, i.e. that of a related importer, the export price was established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer. For this purpose, adjustments were made to take account of all costs, incurred between importation and resale, and for profits accruing, so that a reliable export price could be established. For this purpose, in the absence of new information from independent importers concerning profits accruing, use was made of the same percentage profit as that used in the original investigation.
- (22) EGI claimed, under Article 11(10) of the basic Regulation, that, if the export price is established in accordance with Article 2(9) of the basic Regulation, the anti-dumping duty paid should not be deducted as a cost, since, they argued, it is duly reflected in resale prices.
- (23) In this regard, the evidence in support of the claim, which consisted of a number of selling price calculations, was examined. However, the calculations provided only concerned some of the models sold during the IP and showed that the selling price did not fully reflect the anti-dumping duty in all cases. Consequently, the evidence provided was not found to be conclusive on whether the anti-dumping duty was reflected in the resale prices. The claim was therefore rejected and, when establishing the export price for sales to the Union made through EGS in accordance with Article 2(9) of the basic Regulation, the anti-dumping duty was deducted as a cost.
- (24) Following disclosure of the findings, EGI repeated their claim. However, no new evidence or arguments in support of that claim were submitted. The claim is therefore rejected.

2.3. Comparison

- (25) The normal value and the export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for transport costs, packing costs, credit costs, and commissions, where applicable and justified, in accordance with Article 2(10) of the basic Regulation.
- (26) Following disclosure of the findings, a calculation error involving the incorrect currency conversion of certain allowances for packing costs was brought to light. This was corrected and the dumping margin calculation was revised accordingly.
- (27) Also, following the disclosure of findings, EGI claimed that when constructing normal value, the allowances reported in respect of domestic sales which are not in the ordinary course of trade, should be disregarded and, in the absence of other sales of the product type in question, use should be made of the average allowances for sales of other product types made in the ordinary course of trade, because only the latter would reflect the costs which had been included in the selling, general and administrative costs used to construct the normal value.
- (28) This claim was examined, but was not accepted since, as allowances are used for comparison purposes only and normally reflect the actual costs specific to each transaction, they are an objective element and are therefore independent of whether or not sales are finally made in the ordinary course of trade.
- (29) Moreover, while examining this claim, it was found that incorrect allowances had been used when constructing normal values in the case of those product types for which there were no domestic sales. This was corrected by using the overall average allowances of all domestic sales, and the calculation was amended accordingly. EGI claimed that allowances for credit costs should be granted for these product types, since credit costs were included in the selling, general and administrative costs used in constructing the normal value. This claim was rejected because the product types in question were never actually sold on the domestic market and there was therefore no evidence that their payment would be deferred. In this respect, it is noted that a credit cost allowance is not based on actual payment terms and costs, but on an opportunity cost based on the payment terms agreed at the time of sale.

2.4. Dumping margin

- (30) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping.
- (31) The dumping margin for EGI, expressed as a percentage of the net, free-at-Union-frontier price, duty unpaid, is 7,0 %.
- (32) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the findings could reasonably be considered to be of a lasting nature.
- (33) The structural reorganisation of the sales channels of the applicant and its related company is now well established for the majority of its sales and can be considered long-lasting. Thus, the circumstances that led to the initiation of this interim review

are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Furthermore, no element emerged in the course of the investigation that would suggest that the new circumstances are not lasting. Therefore, it is concluded that the changed circumstances are of a lasting nature.

3. ANTI-DUMPING MEASURES

- (34) In the original investigation EGI was found to be the sole Ukrainian exporting producer of ironing boards. The methodology used to determine the dumping margin for EGI was therefore used to establish the dumping margin for any other Ukrainian exporting producers of the product concerned.
- (35) Consequently in the light of the results of the review investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned originating in Ukraine to 7,0 %.
- (36) Interested parties were informed of the essential facts and considerations on the basis of which it would be proposed to amend Council Regulation (EC) No 452/2007 imposing an anti-dumping duty on imports of the product concerned originating, *inter alia*, in Ukraine and were given an opportunity to comment. Their comments have been taken into account where appropriate and are duly reflected in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning all companies in Ukraine in the table in Article 1(2) of Regulation (EC) No 452/2007 shall be replaced by the following:

Country	Manufacturer	Rate of duty (%)	TARIC additional code
Ukraine	All companies	7,0	-

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*