



EUROPEAN COMMISSION

Brussels, 31.5.2011
COM(2011) 317 final

2011/0141 (NLE)

Proposal for a

COUNCIL REGULATION

terminating the expiry review and 'the new exporter' review of the anti-dumping measures concerning imports of certain magnesia bricks originating in the People's Republic of China

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 Community ('the basic Regulation') in the anti-dumping proceeding concerning imports of certain magnesia bricks 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 (EU) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks 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**

The attached proposal for a Council Regulation is based on the definitive findings concerning the requirements to initiate an anti-dumping proceeding. It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published no later than 25 June 2011.

- **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.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union. 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 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 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 Union budget.

Proposal for a

COUNCIL REGULATION

terminating the expiry review and 'the new exporter' review of the anti-dumping measures concerning imports of certain magnesia bricks originating 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 Community¹ ('the basic Regulation') and in particular Articles 9 and 11(2), (4), (5) and (6) thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Measures in force

- (1) In October 2005, by Regulation (EC) No 1659/2005², the Council imposed definitive anti-dumping duties ranging from 2.7% to 39.9% on imports of certain magnesia bricks originating in the People's Republic of China ('the PRC'). Following two interim reviews requested by Chinese exporting producers, the Regulation was amended in 2009 by Council Regulations (EC) No 825/2009³ and (EC) No 826/2009⁴. Following the reviews, the anti-dumping duties imposed by Regulation (EC) No 1659/2005 currently range from 0% to 39.9%.

1.2. Request for an expiry review

- (2) Following the publication of a notice of impending expiry⁵ of the anti-dumping measures in force on imports of certain magnesia bricks originating in the PRC, the Commission received on 9 July 2010 a request for review pursuant to Article 11(2) of the basic Regulation. The request was lodged by the Magnesia Bricks Production Defence Coalition ('MBPDC') ('the applicant') on behalf of producers representing a

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 267, 12.10.2005, p. 1.

³ OJ L 240, 11.9.2009, p. 1.

⁴ OJ L 240, 11.9.2009, p. 7.

⁵ OJ C 111, 30.4.2010, p. 29.

major proportion, in this case more than 25%, of the total Union production of certain magnesia bricks.

- (3) The request contained prima facie evidence of the likelihood of continuation of dumping and recurrence of injury which was considered sufficient to justify the initiation of an expiry review proceeding. The applicant also claimed that an Austrian-based company, RHI AG (RHI) should be excluded from the definition of the Union industry on the grounds that it had shifted its core business activities to the PRC, where it has a related company producing the product concerned and increased its business activities relating to the product concerned in the PRC.

1.3. Initiation of the expiry review

- (4) On 8 October 2010 the Commission, after consultation of the Advisory Committee, announced by a notice published in the Official Journal of the European Union, ('the notice of initiation') the initiation of an expiry review proceeding concerning imports into the Union of certain magnesia bricks originating in the PRC⁶.

1.4. Investigation period of the expiry review

- (5) In view of the apparent large number of parties involved in the proceeding, the Commission announced in the notice of initiation that it may apply sampling in accordance with Article 17 of the basic Regulation. In order to enable it to decide whether sampling was necessary and, if so, to select a sample, exporting producers, importers and Union producers were required to provide certain information for the period 1 July 2009 to 30 June 2010 ('the investigation period' or 'IP').

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (6) The product concerned ('PC') is chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80% MgO, whether or not containing magnesite, currently falling within CN codes ex 6815 91 00 and ex 6815 99 00.
- (7) The like product is defined as chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80% MgO, whether or not containing magnesite, produced and sold in the Union market.
- (8) Magnesia bricks are manufactured using magnesite minerals as the main raw material. They are normally produced to standard chemical specifications which are then altered to fit the demands of the end-user. Magnesia bricks are normally used in steel production as a lining for the vessels in which the steel is melted.

3. PARTIES CONCERNED BY THE INVESTIGATION

- (9) The Commission officially advised the applicant, other known producers in the Union, the known exporting producers in the PRC, the representatives of the exporting country concerned and known importers and users of the initiation of the proceeding. 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. All

⁶ OJ C 272, 8.10.2010, p. 5.

interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

- (10) In view of the large number of parties involved sampling was envisaged in the notice of initiation for the Chinese exporting producers, unrelated Union importers and Union producers. Of the seventy-eight exporting producers contacted at initiation only four provided the information for the selection of the sample requested in the notice of initiation.
- (11) With regard to Union producers, a total of ten companies, including the producers on behalf of whom MBPDC requested the review, submitted the requested information. The Union producers requesting the review are heavily dependent on the supply of a major raw material from the PRC and have requested confidential treatment for their company names in view of possible retaliatory action.
- (12) The Commission services had contacted all Union producers of magnesia bricks prior to initiation to obtain information on their production levels and to determine their support or opposition to the investigation. One of the companies that replied, RHI AG, expressed its opposition to the expiry review prior to initiation.
- (13) Following initiation, RHI claimed that the facts presented by the applicant in the request for review, especially in regard to RHI's production volume, were not accurate and that, on the contrary, RHI should be included in the definition of the Union industry as had been done in the original proceeding in 2005. It consequently disputed the definition of the Union industry which had led to the initiation of the proceeding on the grounds that the requirements of Article 5(4) of the basic Regulation were not met, since it is the largest Union producer, accounting for more than 50% of total EU production, and is opposed to the initiation.

4. INVESTIGATION

- (14) As mentioned in recital (3) above, the applicant had considered that RHI AG should be excluded from the definition of the Union industry on the grounds that it had shifted its core business activities to the PRC. In view of this and the fact that RHI AG expressed opposition to the review, the Commission asked RHI to provide additional information in order to examine whether or not it should be included in the definition of the Union industry. The requested information concerned the company's business activities both in the EU and in the PRC and included data on its production capacity, production volumes, sales value and volumes in and outside the EU and the PRC and imports value and volume of the product concerned in the Union market. The company provided the additional information and an on-spot verification visit took place at the company's headquarters in Vienna.
- (15) In the original investigation initiated in July 2004, RHI was one of the complainant Union producers. At that time RHI was also importing the product concerned from its related company in the PRC and it was examined whether the company should be excluded from the definition of the Union industry pursuant to Article 4(1)(a) of the basic Regulation.
- (16) It is recalled that the assessment of RHI's situation was made in Commission Regulation (EC) No 552/2005 of 11 April 2005 imposing a provisional duty on

imports of certain magnesia bricks originating in the People's Republic of China⁷ and confirmed by Council Regulation (EC) No 1659/2005 of 6 October 2005 imposing a definitive anti-dumping duty. For the purpose of the assessment, the following criteria were examined:

- the location of the company's headquarters, research and development (R&D) centre and main production sites;
 - the volume/value of the product concerned imported from the PRC compared to the total sales volume and value;
 - the impact the imported sales had on the company's total Union sales, in particular by comparing the profitability of RHI's sales in the EU of the imported product concerned with the profitability rates of the cooperating Union producers.
- (17) At that time it was found that the company's core business was situated in the Union as regards the product concerned (its headquarters, R&D centre and biggest production sites were all located in the Union). Moreover, the vast majority of RHI's sales on the Union market were produced in the Union and only a minor part was produced in the PRC (5% of its total sales volume in the Union) as the production of the related company in the PRC was mainly aimed at the fast-growing Asian market. In addition, it was found that these imports were resold at prices comparable to those of the Union industry and therefore the company was not enjoying substantial beneficial effects, in terms of profitability, by reselling the imported product. Finally, it was explicitly mentioned that RHI's Union production company was a separate legal entity from its Chinese production company. It was found that, although RHI AG was a global group with a production site in the PRC constituting a separate legal entity, it still produced the vast majority of its magnesia bricks, which were subsequently sold on the Union market, at its Union production sites. On these grounds it was concluded that RHI AG, which supported the imposition of measures at that time, formed part of the Union industry.
- (18) During the on-spot verification in the course of the current proceeding, it was found that the company's core business was still situated in the Union. The company's headquarters, shareholders and R&D centre were located in the Union. The company has five plants in the Union producing the product concerned and during the period 2005 to 30 June 2010, the end of the investigation period, the production capacity in these plants increased. The figures provided by RHI concerning its production capacity in the Union of the like product and the production volumes per plant in the investigation period were verified and found to be correct.
- (19) The company also continued to invest in its EU plants and, for the period 2007 to the end of the investigation period, the investments relating to the like product represented a significant portion of the company's total investments in the EU.
- (20) RHI has several related companies in the PRC involved in the production and trading of refractory products including magnesia bricks of which RHI Refractories Liaoning Co. Ltd, a separate legal entity, produces the product concerned. This company is a

⁷ OJ L 93, 12.4.2005, p. 6.

joint venture with a Chinese company and started production in 1997. It has only one plant. Although the plant's production capacity increased substantially during the period from 2005 to the end of the investigation period, it still does not represent a major proportion of the RHI's total production capacity (EU and Chinese plants combined).

- (21) With regard to the imports volume of the product concerned, following the imposition of the measures in 2005, the company imported only one small shipment from its related company in the PRC in the investigation period, as it is subject to the highest anti-dumping duty rate of 39.9%.
- (22) RHI provided its sales value and volume for the like product produced in the Union and for the product concerned produced in the PRC. The company demonstrated that the majority of the sales of its related company in the PRC during the investigation period were for export to countries other than the EU, with the remainder being sold on the Chinese market.
- (23) Concerning the impact the sales of the imported product concerned had on the company's total Union sales, the volume of these imports compared to the company's total sales volume in the Union market was insignificant and thus the impact on the company's sales negligible.
- (24) Based on the data verified on-spot it is concluded that RHI should not be excluded from the definition of the Union industry. The company's situation has not changed substantially since the original investigation, when it was found that the three criteria were met and concluded that the company was part of the Union industry.
- (25) The findings confirm that the company still has its core business activities (headquarters, R&D centre and main production sites) in the EU. The increase in the production capacity of the plant in the PRC in the period 2005 to the end of the investigation period cannot be considered as a shift of the company's core activities to the PRC. Therefore the applicant's argument that RHI should be excluded on the basis that it has a related company in the PRC producing the product concerned and increasing business activities in the PRC is rejected.
- (26) The information supplied by the applicant did not accurately reflect the situation of RHI as a Union producer, in particular with regard to its production volume and production capacity in the Union, and its production capacity in the People's Republic of China. Thus, by including RHI's production volume in the total Union production figure the applicant's output constitutes less than 50% of the total Union production. Furthermore, as explained above, i) RHI should be considered as part of the Union industry within the meaning of Article 4 of the basic Regulation, ii) RHI produces over 50% of total Union production within the meaning of Article 5(4), 2nd sentence, of the basic Regulation and iii) RHI is opposed to the expiry review. Therefore, the proceeding should be terminated.

5. TERMINATION OF THE PROCEEDING

- (27) In the light of the above, it is considered that the present proceeding should be terminated in accordance with Articles 9 and 11(2), (5) and (6) of the basic Regulation.

- (28) The applicant was informed accordingly and was given the opportunity to comment. The applicant strongly contested the conclusions of the Commission and expressed doubts that RHI's production during the investigation period exceeded the production of the remaining Union producers supporting the complaint. In particular the applicant provided various press releases concerning RHI's activities to substantiate its claims that the company no longer views the production in the Union as its core business and that there is a clear shift in the group's strategy as it announced massive extensions of its production capacities in the PRC. However, it was found that such press releases refer to the company's general overall business activities and do not relate specifically to the product investigated. The applicant did not provide any other evidence of any shift in RHI's core activities with regard to the period from 2005 to the end of the investigation period that would lead to the conclusion that RHI should be excluded from the definition of the Union industry.
- (29) It is therefore considered that the expiry review proceeding concerning imports into the Union of certain magnesia bricks originating in the PRC should be terminated.
- (30) In view of the particular circumstances explained in recital 26 above, the definitive anti-dumping duties paid or entered in the accounts pursuant to Regulation (EC) No 1659/2005 on imports of certain magnesia bricks originating in the People's Republic of China released for free circulation as from 14 October 2010, the date of expiry of the anti-dumping measures, should be repaid or remitted.
- (31) Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.
- (32) In the view of the circumstances described above in particular in recital 21, the Commission will monitor the export and import flows of the product concerned as well as the relevant CN Codes. Should the flows appear to change, the Commission will give consideration to the action to be taken.

6. TERMINATION OF THE 'NEW EXPORTER' REVIEW

- (33) On 27 May 2010 the Commission received an application for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The application was lodged by TRL China Ltd ('TRL'), an exporting producer in the People's Republic of China.
- (34) TRL claimed that it operated under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively claimed individual treatment in conformity with Article 9(5) of the basic Regulation. It further claimed that it did not export the product concerned to the Union during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 April 2003 to 31 March 2004 ('the original investigation period') and that it was not related to any of the exporting producers of the product which are subject to the anti-dumping measures mentioned above at recital (1).
- (35) TRL further claimed that it had begun exporting the product concerned to the Union after the end of the original investigation period.

- (36) On 28 September 2010 the Commission, after consultation of the Advisory Committee, announced, by Commission Regulation (EU) No 850/2010⁸ published in the Official Journal of the European Union, the initiation of a 'new exporter' review of Council Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the PRC, the repeal of the duty with regard to imports from TRL and the subjection of these imports to registration.
- (37) The investigation period for the 'new exporter' review was from 1 July 2009 to 30 June 2010.
- (38) In view of the termination of the expiry review and given the fact that TRL did not import the product concerned between the date of the entry into force of the Commission Regulation announcing the initiation of the 'new exporter' review and the date of expiry of the anti-dumping measures (at the end of 13 October 2010), it is considered that the 'new exporter' review concerning imports into the Union of certain magnesia bricks originating in the PRC should therefore also be terminated.
- (39) Interested parties were given the opportunity to make their views known and to request a hearing within the time limit set out in the notice of initiation,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping measures concerning imports of chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80% MgO, whether or not containing magnesite, originating in the People's Republic of China, currently falling within CN codes ex 6815 91 00 and ex 6815 99 00, are hereby repealed and the proceeding concerning these imports is terminated.

Article 2

The definitive anti-dumping duties paid or entered in the accounts pursuant to Article 1(2) of Regulation (EC) No 1659/2005 on imports of certain magnesia bricks originating in the People's Republic of China released for free circulation as from 14 October 2010 shall be repaid or remitted.

Repayment and remission shall be requested from national customs authorities in accordance with applicable customs legislation.

Article 3

The 'new exporter' review initiated by Regulation (EU) No 850/2010 is hereby terminated.

⁸ OJ L 253, 28.9.2010, p. 42.

Article 4

The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Regulation (EU) No 850/2010.

Article 5

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