Council Implementing Regulation (EU) No 475/2011 of 13 May 2011 amending Regulation (EC) No 1425/2006 imposing a definitive anti-dumping duty on imports of certain plastic sacks and bags originating in the People's Republic of China and Thailand, and terminating the proceeding on imports of certain plastic sacks and bags originating in Malaysia

COUNCIL IMPLEMENTING REGULATION (EU) No 475/2011

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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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'),

Having regard to Council Regulation (EC) No 1425/2006[(2)], and in particular Article 2 thereof,

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

Whereas:

A. **PREVIOUS PROCEDURE**

(1) By Regulation (EC) No 1425/2006, the Council imposed a definitive anti-dumping duty on imports into the Union of certain plastic sacks and bags originating in, inter alia, the People's Republic of China ('PRC'). Given the large number of cooperating exporting producers in the investigation that led to the imposition of the anti-dumping duty ('the original investigation') in the PRC, a sample of Chinese exporting producers was selected and individual duty rates ranging from 4,8 % to 12,8 % were imposed on the companies included in the sample, while other cooperating companies not included in the sample were attributed a duty rate of 8,4 %. By Regulation (EC) No 249/2008 a duty rate of 4,3 % has been set for a certain company. A duty rate of 28,8 % for the PRC was imposed on companies which either did not make themselves known or did not cooperate with the investigation.

(2) Article 2 of Regulation (EC) No 1425/2006 stipulates that where any new exporting producer in the PRC provides sufficient evidence to the Commission that:

— it did not export to the Union the products described in Article 1(1) of that Regulation during the investigation period (1 April 2004 to 31 March 2005) ('the investigation period') (the first criterion),

— it is not related to any of the exporters or producers in the PRC which are subject to the anti-dumping measures imposed by that Regulation (the second criterion), and

— it has actually exported to the Union the products concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union (the third criterion),

then Article 1 of that Regulation can be amended by granting the new exporting producer the duty rate applicable to the cooperating companies not included in the sample, i.e. 8,4 %.

(3) The list of companies granted the weighted average duty rate of 8,4 % for cooperating companies and contained in Regulation (EC) No 1425/2006 was amended by Council Regulations (EC) No 249/2008[3] and (EC) No 189/2009[4] and by Council Implementing Regulation (EU) No 474/2011[5].

B. NEW EXPORTING PRODUCER REQUESTS

(4) Six Chinese companies have applied to be granted the same treatment as the companies cooperating in the original investigation not included in the sample ('new exporting producer treatment').

(5) An examination has been carried out to determine whether the six applicants fulfil the criteria for being granted new exporting producer treatment as set out in Article 2 of Regulation (EC) No 1425/2006.

(6) An application form was sent to all six applicants who were asked to supply evidence to demonstrate that they met the three criteria mentioned above.

(7) One company requesting new exporting producer treatment did not provide the requested information. It was therefore not possible to verify whether it fulfilled the criteria set out in Article 2 of Regulation (EC) No 1425/2006 and its request had to be rejected.

(8) One company withdrew its application.

(9) One company neither exported the product concerned to the Union nor entered into an irrevocable contractual obligation to export a significant quantity to the Union after the investigation period. Thus, it did not meet the third criterion and its request was therefore rejected.

(10) One company was not considered as a new exporting producer since it is related to an exporting producer in the PRC which is subject to the anti-dumping measures imposed by Regulation (EC) No 1425/2006. It thus did not meet the second criterion and its request was therefore rejected.

(11) One company submitted misleading information concerning its date of establishment. This cast doubts on the reliability of the information provided, including