Council Implementing Regulation (EU) No 474/2011 of 3 May 2011 amending Regulation (EC) No 1425/2006 imposing a definitive anti-dumping duty on imports of certain plastic sacks and bags originating, inter alia, in the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 474/2011

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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 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Articles 13(3), 14(3) and 14(5) thereof,

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

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Regulation (EC) No 1425/2006[(2)] ('the original Regulation'), the Council imposed definitive anti-dumping duties on imports into the Union of certain plastic sacks and bags, originating, inter alia, in the People's Republic of China ('PRC'). Given the large number of cooperating Chinese exporting producers, a sample of exporting producers was selected and individual duty rates ranging from 4,8 % to 12,8 % were imposed on companies included in the sample, while on other cooperating companies not included in the sample and listed in Annex I to the original Regulation was imposed a duty rate of 8,4 %. A duty rate of 28,8 % ('residual duty rate') was imposed on Chinese companies which either did not make themselves known or did not cooperate with the investigation of dumping which covered the period from 1 April 2004 to 31 March 2005 ('the original investigation').

(2) By Regulation (EC) No 189/2009[(3)], amending the original Regulation, and in accordance with Article 2 of the original Regulation, three Chinese companies were added to the list of producers from the PRC listed in Annex I.

1.2. Ex officio initiation

(3) Prima facie evidence at the disposal of the Commission indicated that, following the imposition of measures, a change in the pattern of trade involving exports

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 474/2011. (See end of Document for details)*

from the PRC to the Union took place for which there was insufficient due cause or justification other than the imposition of the duties in force. This change in the pattern of trade appeared to stem from exports to the Union of the product concerned produced by Chinese exporting producers subject to the residual duty rate through a Chinese exporting producer benefiting from a lower duty rate, namely the company Xiamen Xingxia Polymers Co., Ltd ('Xiamen') listed in Annex I to the original Regulation.

(4) Furthermore, the evidence pointed to the fact that the remedial effects of the existing anti-dumping measures on the product concerned were being undermined in terms of prices. There was sufficient prima facie evidence that the imports of the product concerned were at prices well below the non-injurious price established in the original investigation that led to the existing measures.

(5) Finally, the Commission had sufficient prima facie evidence at its disposal that the prices of the product concerned are dumped in relation to the normal value previously established.

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission adopted Regulation (EU) No 748/2010[(4)] initiating an investigation of the alleged circumvention of the anti-dumping measures ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of the product concerned declared as having been manufactured by Xiamen under the specific TARIC additional code A981 attributed to them in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports.

1.3. **Investigation**

(7) The Commission officially advised the authorities of the PRC, Xiamen, as well as the companies allegedly having their products exported through Xiamen ('the other exporting producers') of the initiation of the investigation and sent questionnaires. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. Interested parties were also informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being made on the basis of the facts available.

(8) No replies were received from the other exporting producers and an incomplete reply was received from Xiamen.

1.4. **Investigation period**

(9) The investigation period ('IP') was the period from 1 January 2009 to 30 June 2010. Data was collected for the period from January 2006 up to the end of the IP to investigate the alleged change in the pattern of trade and the other aspects set out in Article 13 of the basic Regulation.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations/degree of cooperation/methodology

(10) Xiamen submitted an incomplete and partial reply to the questionnaire. The Commission services sent a letter to Xiamen, identifying the deficiencies of its questionnaire reply and requesting complete and coherent information, to which Xiamen did not react. In addition, Xiamen refused a proposed verification of the data at its premises.

(11) Consequently Xiamen was informed that, under these circumstances, the Commission considers the company as non-cooperating, in accordance with Article 18 of the basic Regulation, and that findings would be based on the facts available. Xiamen was also made aware that the result of the investigation might be less favourable than if it had fully cooperated. Xiamen did not react to this letter.

(12) In view of the above and given that no statistical data were available to determine export volumes and prices at company level during the IP, findings in respect of the alleged circumvention had to be made on the basis of facts available in accordance with Article 18 of the basic Regulation, namely those based on the evidence received from Member States' customs authorities and on the non-verified partial reply, submitted by Xiamen, to the questionnaire.

2.2. Product concerned

(13) The product concerned is plastic sacks and bags, containing at least 20 % by weight of polyethylene and of sheeting of a thickness not exceeding 100 micrometers (μm), originating in the People's Republic of China, currently falling within CN codes ex 3923 21 00, ex 3923 29 10 and ex 3923 29 90 (TARIC codes 3923 21 00 20, 3923 29 10 20, and 3923 29 90 20).

2.3. Change in the pattern of trade

(14) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was carried out by analysing whether there was a change in the pattern of trade between individual companies in the PRC and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the product concerned, and where there is evidence of dumping in relation to the normal values previously established for the like product.

(15) Given that Eurostat data cannot be used to determine export volumes and prices at company level since only aggregated countrywide data are provided and no other statistical data at company level are available, export volumes and prices reported by Xiamen in its partial questionnaire reply were used.

(16) According to the information received from Xiamen, sales to the Union increased significantly after the imposition of measures in September 2006. For some

periods, the exports doubled, compared to the sampling period used in the original investigation and prices reported were below the average EU target price established during the original investigation.

2.4. **Insufficient due cause or economic justification other than the imposition of anti-dumping duties**

(17) In addition to the increase in sales volume, it was noted that according to the information submitted in the original investigation for the sampling exercise, Xiamen declared that it had no related companies and no production outside its main factory. In its partial reply to the anti-circumvention questionnaire, Xiamen reported that during the IP it outsourced certain production steps, such as colour printing or bagging, and that sometimes it sells raw materials to the contracting companies.

(18) The partial questionnaire reply confirmed that the contracting companies mentioned by Xiamen are the other exporters which were, according to the prima facie evidence, allegedly channelling exports to the Union. However, the reply also revealed that it is not a matter of an outsourcing arrangement where the ownership of the raw material and the finished goods stay with the company giving the outsourcing order, but goes beyond for the reasons stated below.

(19) In all cases of sales reported as 'partly processed', payment by the European clients was reported as being made not to Xiamen but to the bank accounts of the two companies allegedly involved in channelling. These sales account for more than 20 % of all EU sales in 2009. Moreover, the list of sales transactions submitted by Xiamen reveals diverse invoicing methodologies which differ in alphanumeric structure and length. With regard to sales reported as 'partly processed' via one of the two companies, representing the majority of those sales, it appears that the invoice number includes two letters referring to the company name of the company allegedly channelling. Moreover, the two companies are located around 1 000 km away from Xiamen, which puts into question the economic justification of such an arrangement.

(20) In addition, it cannot be excluded that more sales than those identified in the detailed list of sales transactions submitted by Xiamen are affected by the alleged channelling as, according to production and capacity statistics also submitted by Xiamen, more than 40 % of its production in 2007, 2008 and 2009 were declared as outsourced.

(21) It was also noted that sales reported as 'partly processed' stopped in October 2009, i.e. after the customs authorities of certain Member States refused to apply the individual anti-dumping duty rate of Xiamen to certain imports apparently produced by the other exporting producers.

(22) The above leads, therefore, to the conclusion that a change in the pattern of trade has taken place following the imposition of measures on the product concerned for which there is no due cause or economic justification other than the avoidance of the residual anti-dumping duty rate in force.

2.4.1. *Undermining the anti-dumping duty's remedial effect on injury*

(23) The increase of imports declared under the name of Xiamen was significant in terms of quantities. According to its questionnaire reply, Xiamen nearly doubled its sales to the EU in 2007 and 2008, compared to the sales reported during the period of the original investigation, which was mainly due to the involvement of the other exporting producers. The comparison of the average EU target price established during the original investigation and the weighted average export price reported during the IP shows underselling.

(24) The conclusion is therefore that the practice described above undermines the measures' remedial effects on injury, both in terms of quantities and prices.

2.4.2. *Evidence of dumping*

(25) Finally, in accordance with Article 13(1) and (2) of the basic Regulation, it was examined whether there was evidence of dumping in relation to the normal value previously established.

(26) The comparison of the weighted average normal value as established during the original investigation (where normal value was established on the basis of an analogue country, Malaysia) and the weighted average export price during the current IP as reported by Xiamen in its partial questionnaire reply shows a dumping margin exceeding the dumping margin established during the original investigation for non-sampled companies.

3. MEASURES

(27) Given the above, and in application of Article 18 of the basic Regulation, it was concluded that a change in the pattern of trade has taken place, in accordance with Article 13(1) of the basic Regulation. By virtue of the second sentence of Article 13(1) of the basic Regulation, the residual anti-dumping duty rate on imports of the product concerned originating in the PRC should therefore be extended to imports of the same product declared as having been manufactured by Xiamen. In practical terms, TARIC additional code A999 should be declared for those imports from the entry into force of this Regulation.

(28) Furthermore, in order to enable a more detailed monitoring, henceforth, of the trade flows concerning the non-sampled companies, a TARIC additional code will be attributed to each non-sampled company listed in Annex I to the original Regulation.

(29) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provide that any extended measure is to apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports consigned from Xiamen.

4. DISCLOSURE

(30) Interested parties were informed of the essential facts and considerations on the basis of which the Council intended to extend the residual anti-dumping duty rate