Council Regulation (EC) No 189/2009 of 9 March 2009 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 REGULATION (EC) No 189/2009

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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 384/1996 of 22 December 1995 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 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 Community of certain plastic sacks and bags falling within CN codes ex 3923 21 00 (TARIC code 3923 21 00 20), ex 3923 29 10 (TARIC code 3923 29 10 20) and ex 3923 29 90 (TARIC code 3923 29 90 20), originating in the People's Republic of China (PRC) and Thailand. Given the large number of cooperating exporting producers in the investigation that led to the imposition of the anti-dumping duty (the original investigation), a sample of Chinese and Thai exporting producers was selected and individual duty rates ranging from 4,8 % to 14,3 % were imposed on the companies included in the samples, while other cooperating companies not included in the sample were attributed a duty rate of 8,4 % for the PRC and 7,9 % for Thailand. Duty rates of 28,8 % for the PRC and 14,3 % for Thailand were 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 or Thailand provides sufficient evidence to the Commission that:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 189/2009. (See end of Document for details)*

— it did not export to the Community 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 or Thailand which are subject to the anti-dumping measures imposed by that Regulation (the second criterion), and

— it has actually exported to the Community 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 Community (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 % for Chinese companies and 7,9 % for Thai companies.

B. NEW EXPORTING PRODUCERS' REQUESTS

(3) Seven companies (five Chinese and two Thai) 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).

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

(5) An application form was sent to all seven applicants who were also asked to supply evidence to demonstrate that they meet the three criteria mentioned above.

(6) Two Chinese companies requesting new exporting producer treatment did not provide the requested information. It was therefore not possible to verify whether these companies fulfilled the criteria set out in Article 2 of Regulation (EC) No 1425/2006, and their requests had to be rejected.

(7) One Thai company provided misleading information and its request was therefore rejected.

(8) One Thai company exported the product concerned to the Community during the investigation period. It thus did not meet the first criterion and its request was therefore rejected.

(9) The evidence provided by the remaining three Chinese exporting producers is considered sufficient to show that they fulfil the criteria set out in Article 2 of Regulation (EC) No 1425/2006 and therefore to grant them the duty rate applicable to the cooperating companies not included in the sample (8,4 % for Chinese companies) and consequently to add their names to the list of exporting producers in Annex I to Regulation (EC) No 1425/2006.

(10) The applicants and the Community industry were informed of the findings of the examination and were given the opportunity to submit their comments.