Council Regulation (EC) No 1356/2007 of 19 November 2007 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 1356/2007

of 19 November 2007

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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 Article 2 of Regulation (EC) No 1425/2006[(2)],

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 parties, 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 sample, 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:

(i) 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 first criterion);

(ii) 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

(iii) 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).

Article 1 of that Regulation may 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) Nine companies (six Chinese and three 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 applicants fulfil the criteria for being granted new exporting producer treatment as set out in Article 2 of Regulation (EC) No 1425/2006, by verifying:

— that they 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),

— that they are 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, and

— that they have actually exported to the Community the products concerned after the investigation period on which the measures are based, or they have entered into an irrevocable contractual obligation to export a significant quantity to the Community.

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

(6) Companies fulfilling these three criteria may be granted 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, by amending the Annexes I and II of Regulation (EC) No 1425/2006.

(7) Four companies (two Chinese and two Thai) requesting new exporting producer treatment did not reply to the submitted application form. 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 request had to be rejected.

(8) Two companies returned information which was found to be incomplete. 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 request had to be rejected.

(9) One Chinese company was found to be related to a company which is subject to the anti-dumping measures imposed by Regulation (EC) No 1425/2006 and its application for exporting producer treatment was therefore rejected as it failed one of the criteria listed above.

(10) One other Chinese company's application was rejected because it does not have its own production facility and could therefore not be considered to be an exporting producer.

(11) The evidence provided by the remaining exporting producer (a Thai company) is considered sufficient to grant it the duty rate applicable to the cooperating companies not included in the sample (i.e. 7,9 % for Thai companies) and consequently to add it to the list of exporting producers in Annex II (the Annex) to Regulation (EC) No 1425/2006.

(12) The applicants who cooperated and the Community industry have been informed of the findings of the examination and have had the opportunity to submit their comments.

(13) All arguments and submissions made by interested parties were analysed and duly taken into account where warranted.

C. CLARIFICATION AND CORRECTION

(14) It has been brought to the attention of the Commission's services that the terminology 'thickness of a bag' could cause confusion during the customs clearance process. It has therefore been decided to use this Regulation to clarify this issue, as well as to correct an incorrect reference in Article 2 of Regulation (EC) No 1425/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1425/2006 is hereby amended as follows:

(i) Article 1(1) shall be replaced by the following:

Article 1

1 Definitive anti-dumping duties are hereby imposed on imports of plastic sacks and bags, containing at least 20 % by weight of polyethylene and of sheeting of a thickness not exceeding 100 micrometres (μm) originating in the People's Republic of China and Thailand; and 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).;

(ii) in Article 2: '… may amend Article 1(3)',