Council Regulation (EC) No 1425/2006 of 25 September 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 1425/2006

of 25 September 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation) and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. INITIATION

(1) On 30 June 2005, pursuant to Article 5 of the basic Regulation, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Union*[(2)], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain plastic sacks and bags originating in the People's Republic of China (the PRC), Malaysia and Thailand (the countries concerned).

(2) The proceeding was initiated as a result of a complaint lodged on 17 May 2005 by 29 Community producers of plastic sacks and bags, representing a major proportion (in this case more than 25 %) of the total Community production of plastic sacks and bags. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. PARTIES CONCERNED BY THE PROCEEDING

(3) The Commission officially advised the complainant Community producers, their association, other Community producers, the exporting producers, importers, suppliers and users as well as user associations known to be concerned and the representatives of the exporting countries of the initiation of the proceeding. Interested

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1425/2006. (See end of Document for details)*

parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set in the notice of initiation.

(4) Given the large number of known exporting producers in the PRC, Malaysia and Thailand, as well as the large number of known Community producers and importers, sampling for the determination of dumping and injury was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation (see below for further details regarding sampling).

(5) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and to the authorities of the PRC. Some 108 companies and groups requested MET pursuant to Article 2(7) of the basic Regulation. All the companies and groups above also claimed IT should the investigation have established that they did not meet the conditions for MET. Three companies claimed IT only.

(6) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. In addition to questionnaire replies received from parties selected in the samples of exporters, importers and Community industry, replies to questionnaires were also received from two Community retailers.

(7) A number of parties also made their views known in writing. All parties who so requested within the set time-limit and indicated that there were particular reasons why they should be heard were granted a hearing.

(8) The Commission sought and verified all the information it deemed necessary for the purpose of the preliminary determination of dumping, resulting injury and Community interest and carried out investigations at the premises of the following companies:

Community producers

— SP Metal, Paris, France and its related companies SP Metal Biel, Zaragoza, Spain and Jet Sac SA, Auchel, France

— Groupe Barbier SA, Ste Sigolene, France

— Plasticos Romero SA, Murcia, Spain

— Plasbel SA, Murcia, Spain

— Alplast SA, Ste Marie aux Mines, France

Unrelated importers in the Community

— FIPP GmbH & Co KG and its related company DEISS GmbH & Co KG, Hamburg, Germany

Exporting producers and related companies in the exporting countries

PRC

— Cedo Shanghai Ltd, Shanghai

— Chun Yip Plastics (Shenzhen) Ltd, Shenzhen

— Huizhou Jun Yang Plastics Co., Ltd, Huizhou
— Suzhou Guoxin Group Co., Ltd, Taicang
— Wuxi Jiayihe Packaging Co., Ltd. and Wuxi Bestpac Packaging Co., Ltd, Wuxi
— Zhongshan Qi Yu Plastic Products Co., Ltd, Zhongshan
— Weifang Lefu Plastic Products Co., Ltd, Weifang
— Jinguan (Longhai) Plastics Packing Co., Ltd, Longhai
— Sunway Kordis (Shanghai) Ltd. and Shanghai Sunway Polysell Ltd, Shanghai
— Nantong Huasheng Plastic Products Co., Ltd, Nantong

Malaysia

— Dragonpak Industries (M) S/B, Johor Bahru
— Europlastics Malaysia S/B, Shah Alam
— Hond Tat Industries S/B, Klang
— Plastic V S/B, Klang
— Poly Carrier Industries S/B, Klang
— Sido Bangun S/B, Negri Sembilan

Thailand

— King Pac Industrial Company Ltd, Chonburi
— Multibax Public Co., Ltd, Chonburi
— Naraipak Co., Ltd, Bangkok
— Sahachit Watana Plastic Industry Co., Ltd, Bangkok
— Thai Plastic Bags Industries Co., Ltd, Nakornpathorn

Related importers in the Community

— Cedo Limited UK, Telford, United Kingdom
— Cedo GmbH, Mönchengladbach, Germany
— Europackaging plc, Birmingham, United Kingdom
— 3S's Limited, Upton-upon-Severn, United Kingdom
— Kordis Limited and Kordis BV, Stratford-upon-Avon, United Kingdom

3. INVESTIGATION PERIOD

(9) The investigation of dumping covered the period from 1 April 2004 to 31 March 2005 (investigation period or IP). The examination of injury covered the period from 1 January 2002 to 31 March 2005 (period considered).

B. SAMPLING

1. SAMPLING FOR EXPORTING PRODUCERS IN THE PRC, MALAYSIA AND THAILAND

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(10) As stated above, in view of the large number of exporting producers in the PRC, Malaysia and Thailand, sampling was proposed in the notice of initiation, in accordance with Article 17(1) of the basic Regulation.

(11) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, and the names and activities of all their related companies involved in the production and/or selling of the said product. The authorities in the PRC, Malaysia and Thailand were also consulted.

(12) Some 108 companies and groups in the PRC, 36 companies from Malaysia and 17 from Thailand came forward and provided the requested information within the given deadline. However, only 104 companies and groups from the PRC, 31 companies from Malaysia and 14 from Thailand reported exports to the Community during the investigation period.

(13) Those exporting producers that exported the said product to the Community during the investigation period and expressed a wish to participate in the sample were considered as cooperating companies and were taken into account in the selection of the samples.

(14) The cooperating exporting producers represented around 95 % of total exports of the product concerned from the PRC to the Community and 96 % of Malaysia's and 88 % of Thailand's total exports.

(15) The remaining companies were either traders or exporting producers without exports to the Community during the investigation period. Therefore, a dumping margin will not be determined for these companies.

(16) Exporting producers which did not make themselves known within the aforesaid period were considered as not cooperating with the investigation.

(17) According to Article 17(1) of the basic Regulation, the following criteria were taken into account in the selection of the sample: size of exporting producer with regard to export sales to the Community as well as size of exporting producer with regard to domestic sales. It was considered that, for the reasons set out below, the sample should include a sufficient number of companies selling on the domestic market. Therefore, a number of major exporting companies having representative domestic sales were included in the sample.

(18) On this basis, the Commission originally selected samples of 10 Chinese exporting producers, six Malaysian exporting producers and six Thai exporting producers. The selected companies represented around 52 %, 62 % and 71 % of the exports of the said product to the Community from the PRC, Malaysia and Thailand respectively.

(19) In accordance with Article 17(2) of the basic Regulation, the cooperating exporting producers and the authorities of the countries concerned were given the opportunity to comment on the selection of the sample.

(20) A number of Chinese exporters argued that they should have been included in the sample, because of particular circumstances regarding their companies such as: product types, business model, cost structure, or affiliation with Hong Kong or EU-based groups. However, it would have been impractical, and not required by the basic Regulation, to aim for a sample reflecting all the above factors, given the amount of information and the time available for the sample selection. Moreover, the basic Regulation allows limiting the investigation to the largest representative volume of exports which can reasonably be investigated within the time available.

(21) One Chinese exporter argued that the Commission should, according to the Anti-Dumping Agreement (ADA) of the WTO, have simply selected the exporters with the largest volume of export sales to the Community, without having regard to the volume of domestic sales. Article 6.10 ADA provides, *inter alia*, that a sample of exporters can be chosen based on 'the largest percentage of the volume of the exports from the country in question which can reasonably be investigated'. This interpretation of Article 6.10 ADA has to be rejected. First, there is nothing in the wording of Article 6.10 ADA that precludes that exporters with representative domestic sales are also included in the sample. Second, the purpose of selecting a sample of exporting producers is to collect the highest possible representative data on the basis of which a dumping margin could be calculated. In this respect, it is essential that companies with domestic sales of the product concerned are included in the sample in order to be able to determine normal value and SG&A and profit according to Articles 2(1) to (6) of the basic Regulation. For companies found to fulfil the MET criteria, establishing normal value without sufficient information on such SG&A and profit would be problematic. The largest volume of exports that can reasonably be investigated should thus also include at least a sufficient number of companies with domestic sales in the IP. As a consequence, only the major exporting companies which also represented a major part of the domestic sales have been selected in accordance with Article 6.10 ADA and Article 17 of the basic Regulation.

(22) During the investigation, it was found that Wuxi Jiayihe Packaging Co., Ltd and Wuxi Bestpac Packaging Co., Ltd had in error declared large amounts of exports to the EC of the said product that they themselves had not produced, but had in fact processed for other exporting producers. Given the small amount of their actual sales of own-produced said product, the company was removed from the Chinese sample. However given that the company had already been inspected, it will in effect receive individual examination.

(23) The Malaysian Plastic Manufacturers Association pointed out that one of the companies not selected in the sample had failed to report its local sales of plastic bags of a related company, and should have been selected for the sample. As the information about this reporting mistake was received in a timely manner, the Commission agreed to