



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.10.2007  
COM(2007) 634 final

Proposal for a

**COUNCIL REGULATION**

**amending Council 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**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96<sup>1</sup> on protection against dumped imports from countries not members of the European Community as last amended by Council Regulation (EC) No 2117/2005<sup>2</sup> ('the basic Regulation') in the proceeding concerning imports of certain plastic sacks and bags originating in the People's Republic of China (PRC) and Thailand.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 1425/2006<sup>3</sup>, imposing a definitive anti-dumping duty on imports into the Community of certain plastic sacks and bags originating in the People's Republic of China (PRC) and Thailand, and terminating the proceeding on imports of certain plastic sacks and bags originating in Malaysia.

Proposal for granting new exporting producer treatment to new exporting producers to the Community.

- **Consistency with other policies and objectives of the Union**

Not applicable.

### 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

The applicants who co-operated and the Community industry have been informed of the findings of the examination and have had the opportunity to submit their comments.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

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<sup>1</sup> OJ L 56, 6.3.1996, p. 1.

<sup>2</sup> OJ L 340, 23.11.2005, p. 17.

<sup>3</sup> OJ L 270, 29.09.2006, p. 4

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not make provision for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

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 originating in the People's Republic of China (PRC) and Thailand, and terminated the proceeding on imports of certain plastic sacks and bags originating in Malaysia.

During the original investigation, given the large number of exporters/producers of the product concerned in the PRC and Thailand, a sample of exporting producers was chosen. Individual duty rates ranging from 4,8% to 14,3% were imposed on the companies selected in the sample, while other co-operating 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 co-operate in the investigation.

Article 2 of Council Regulation (EC) No 1425/2006 gave the possibility to Chinese and Thai exporting producers which met the criteria set out in the same Article to be granted the same status as the co-operating companies not included in the sample ('newcomer status').

One Thai company which has requested new exporting producer status provided sufficient evidence that it fulfils the criteria set out in Art. 2 of Council Regulation (EC) No 1425/2006 and therefore its name should be added to the list of companies subject to the weighted average duty of 7,9% for Thai companies.

It is therefore proposed that the Council adopt the attached proposal for a Regulation, which should be published in the Official Journal as soon as possible.

Moreover it was brought to the attention of the Commission services that the terminology 'thickness of a bag' could cause confusion during the customs clearing process. It is therefore proposed to use the 'newcomer' regulation in order to clarify this issue.

- Finally it is proposed to take the opportunity of the 'newcomer' regulation to correct an incorrect reference in Article 2 of the Council Regulation (EC) No 1425/2006.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Council Regulation (EC) No 1425/2006 of 25 September 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain plastic sacks and bags originating in the PRC and Thailand, and terminating the proceeding on imports of certain plastic sacks and bags originating in Malaysia, leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic regulation does not foresee alternative options.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

Proposal for a

## COUNCIL REGULATION

**amending Council 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**

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 ('the basic Regulation')<sup>4</sup>,

Having regard to Article 2 of Council Regulation (EC) No 1425/2006<sup>5</sup> 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,

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 co-operating 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 co-operating 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 Council Regulation (EC) No 1425/2006 stipulates that where any new exporting producer in the PRC or Thailand provides sufficient evidence to the

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<sup>4</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>5</sup> OJ L 270, 29.09.2006, p. 4.

Commission that it did not export to the Community the products described in Article 1(1) during the investigation period (1 April 2004 to 31 March 2005) (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 co-operating 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 Council Regulation (EC) No 1425/2006, by verifying:
  - that they did not export to the Community the products described in Article 1(1) 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 co-operating 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 Council 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 Council 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 Council 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 Council 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 co-operating 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 Council Regulation (EC) No 1425/2006.
- (12) The applicants who co-operated 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 Council Regulation (EC) No 1425/2006,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The following company shall be added to the list of producers from Thailand listed in Annex II to Council Regulation (EC) No 1425/2006:

| <b>Company</b>                 | <b>City</b> |
|--------------------------------|-------------|
| POLY PLAST (THAILAND) CO., LTD | Samutsakorn |

#### *Article 2*

In Article 1(1) of Council Regulation (EC) No 1425/2006 read 'of sheeting of a thickness not exceeding 100 micrometres ( $\mu\text{m}$ )' instead of 'of a thickness not exceeding 100 micrometers'.

*Article 3*

The reference in Article 2 of Council Regulation (EC) No 1425/2006 should be read 'Article 1(2)' instead of 'Article 1(3)'.

*Article 4*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council  
The President*