

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 18.4.2011
COM(2011) 210 final

2011/0088 (NLE)

Proposal for a

COUNCIL REGULATION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulation (EC) n° 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **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 imposing a definitive anti-dumping duty on imports of certain plastic sacks and bags originating in the People's Republic of China and Thailand.

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

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

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

The basic Regulation does not contain provisions 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**

The attached proposal for a Council Regulation is based on the definitive finding that one Chinese exporting producer has met all criteria to be granted the new exporting

producer status and therefore be subject to the weighted average duty anti-dumping duty of 8.4%.

- **Legal basis**

Council Regulation (EC) n° 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

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

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, 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:

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

Proposal for a

COUNCIL REGULATION

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

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 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ (the basic Regulation),

Having regard to Council Regulation (EC) No 1425/2006² 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 Union of certain plastic sacks and bags originating in, *inter alia*, the People's Republic of China ('PRC'). Given the large number of cooperating exporting producers in the investigation that led to the imposition of the anti-dumping duty ('the original investigation') in the PRC, a sample of Chinese exporting producers was selected and individual duty rates ranging from 4.8% to 12.8% 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%. By Regulation (EC) No 249/2008 a duty rate of 4.3% has been set for a certain company. A duty rate of 28.8% for the PRC was 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 provides sufficient evidence to the Commission that:

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 270, 29.9.2006, p. 4.

- 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 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%.
- (3) The list of companies granted the weighted average duty rate of 8.4% for cooperating companies was amended by regulations (EC) No 249/2008³ and (EC) No 189/2009⁴ and by Council Regulation (EU) **No XXX**.

B. NEW EXPORTING PRODUCER REQUESTS

- (4) Six Chinese companies 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').
- (5) An examination has been carried out to determine whether the six applicants fulfil the criteria for being granted new exporting producer treatment as set out in Article 2 of Council Regulation (EC) No 1425/2006.
- (6) An application form was sent to all six applicants who were asked to supply evidence to demonstrate that they met the three criteria mentioned above.
- (7) One company requesting new exporting producer treatment did not provide the requested information. It was therefore not possible to verify whether it fulfilled the criteria set out in Article 2 of Council Regulation (EC) No 1425/2006 and its request had to be rejected.
- (8) One company withdrew its application.
- (9) One company did not export the product concerned to the Union neither it entered into an irrevocable contractual obligation to export a significant quantity to the Union after the investigation period. Thus, it did not meet the third criterion and its request was therefore rejected.
- (10) One company was not considered as a new exporting producer since it is related to an exporting producer in the PRC which is subject to the anti-dumping measures imposed by the Regulation (EC) No 1425/2006. It thus did not meet the second criterion and its request was therefore rejected.

³ OJ L 76, 19.3.2008, p. 8.

⁴ OJ L 67, 12.3.2009, p. 5.

- (11) One company submitted misleading information concerning its date of establishment. This cast doubts on the reliability of the information provided, including the period of time the product concerned could have been exported to the EU. Its request was therefore rejected.
- (12) The evidence provided by the remaining Chinese exporting producer was considered sufficient to show that it fulfils the criteria set out in Article 2 of Council Regulation (EC) No 1425/2006. This exporting producer can therefore be granted the duty rate applicable to the cooperating companies not included in the sample (i.e. 8.4%) and consequently its name can be added to the list of exporting producers in Annex I to Council Regulation (EC) No 1425/2006.
- (13) The applicants and the Union industry have been informed of the findings of the examination and were given the opportunity to submit their comments.
- (14) All arguments and submissions made by interested parties were analysed and duly taken into account where warranted,

HAS ADOPTED THIS REGULATION:

Article 1

The following company shall be added to the list of producers from the People's Republic of China listed in Annex I to Council Regulation (EC) No 1425/2006:

Company	City	TARIC additional code
Xiamen Good Plastic Co., Ltd.	Xiamen	B109

Article 2

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*