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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.7.2009
COM(2009) 339 final

Proposal for a

COUNCIL REGULATION

Terminating the partial interim review of the anti-dumping measures applicable to imports of certain plastic sacks and bags originating in the People's Republic of China

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 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 ('the basic Regulation') in the proceeding concerning imports of certain plastic sacks and bags originating, *inter alia*, in the People's Republic of China.

- **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, and terminating the proceeding on imports of certain plastic sacks and bags originating in Malaysia, last amended by Council Regulation (EC) No 189/2009.

- **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**

On 11 July 2008 the Commission initiated a partial interim review limited to dumping for one exporting producer of certain plastic sacks and bags originating in the People's Republic of China upon the request of the exporter concerned.

On 24 March 2009 the company concerned withdrew its request for a review. Upon consideration of whether it would be warranted to continue the investigation *ex officio*, it was concluded that the review should be terminated. It is therefore proposed that the Commission adopt the attached proposal for a Regulation which should be published in the Official Journal of the European Union by 10 July 2009 at the latest.

- **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 reasons:

The form of action is described in the basic Regulation and 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:

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 Community budget.

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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 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation') and in particular Article 11(3) thereof,

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

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 1425/2006², the Council imposed a definitive anti-dumping duty on imports of certain plastic sacks and bags originating, *inter alia*, in the People's Republic of China. The Regulation was last amended by Council Regulation (EC) No 189/2009³. For the eight companies with individual duties, the duties in force range from 4.3% to 12.8%. The duty is 8.4% for cooperating companies without individual duties and the residual duty is 28.8%.

1.2. Request for review

(2) On 25 March 2008 the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation from one exporting producer of certain plastic sacks and bags originating in the People's Republic of China.

(3) The request was lodged by CeDo Shanghai Limited ('CeDo Shanghai' or 'the applicant').

(4) The applicant alleged that, *inter alia*, its export prices of certain plastic sacks and bags to the Community had increased significantly and substantially more than the constructed normal value based on the applicant's cost of production in the People's Republic of China and that this had led to a reduction or elimination of dumping.

¹ OJ L 56, 6.3.1996, p. 1.

² OJ L 270, 29.9.2006, p. 4.

³ OJ L 67, 12.3.2009, p. 5.

Therefore, the continued imposition of measures at the existing levels, which were based on the level of dumping previously established, was no longer necessary to offset dumping.

1.3. Initiation

- (5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice ('the notice of initiation') published in the *Official Journal of the European Union*⁴ the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited to the examination of dumping as far as CeDo Shanghai is concerned. The 'product concerned' was the same as that set out in Council Regulation (EC) No 1425/2006 as amended, being 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, 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).
- (6) The investigation of dumping covered the period from 1 July 2007 to 30 June 2008.
- (7) The Commission officially advised the applicant, representatives of the Community industry and the representatives of the exporting country of the initiation of the review. Interested 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.

2. WITHDRAWAL OF THE REQUEST AND TERMINATION OF THE PROCEEDING

- (8) By letter to the Commission dated 24 March 2009, CeDo Shanghai formally withdrew its request for the partial interim review of the anti-dumping measures applicable to imports of certain plastic sacks and bags originating, *inter alia*, in the People's Republic of China.
- (9) It was considered whether it would be warranted to continue the investigation *ex officio*. The Commission considered that the termination of the investigation did not affect the anti-dumping measure already in force and that such termination would not be against the Community interest. On this basis, the investigation should be terminated.
- (10) Interested parties were informed of the intention to terminate the investigation and were given the opportunity to comment. However, no comments which could alter this decision were received.
- (11) It is therefore concluded that the review concerning imports of certain plastic sacks and bags originating, *inter alia*, in the People's Republic of China should be terminated without amending the anti-dumping measures in force.

⁴ OJ C 176, 11.7.2008, p. 9.

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of certain plastic sacks and bags originating, *inter alia*, in the People's Republic of China initiated pursuant to Article 11(3) of Regulation (EC) No 384/96 is hereby terminated without amending the anti-dumping measures in force.

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