

COUNCIL IMPLEMENTING REGULATION (EU) No 627/2012

of 10 July 2012

terminating the partial interim review and the expiry review concerning the anti-dumping measures applicable on imports of certain plastic sacks and bags originating in the People's Republic of China and Thailand imposed by Regulation (EC) No 1425/2006

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 Community⁽¹⁾ (‘the basic Regulation’) and in particular Article 11(2), (3), (5) and (6) and Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) By Regulation (EC) No 1425/2006⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of certain plastic sacks and bags, originating in the People's Republic of China (PRC) and Thailand.
- (2) That Regulation was subsequently amended by Council Regulations (EC) No 1356/2007⁽³⁾, (EC) No 249/2008⁽⁴⁾ and (EC) No 189/2009⁽⁵⁾ and by Council Implementing Regulations (EU) No 474/2011⁽⁶⁾ and (EU) No 475/2011⁽⁷⁾.

2. Requests for reviews and initiation

- (3) On 18 May 2010, the Commission received a request for a partial interim review of Regulation (EC) No 1425/2006 from Greenwood Houseware (Zhuhai) Ltd, an exporting producer of certain plastic sacks and bags in the PRC (‘the applicant’).
- (4) Subsequently, following the publication of a notice of impending expiry of the definitive anti-dumping measures in force, the Commission received, pursuant to Article 11(2) of the basic Regulation, a request for an expiry review, lodged on 30 June 2011.

- (5) The request was lodged by 44 Union producers together, representing around 30 % of the total estimated Union production of certain plastic sacks and bags.
- (6) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and injury if measures were allowed to lapse.
- (7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the partial interim review and an expiry review, the Commission announced the initiation of the partial interim review pursuant to Article 11(3) of the basic Regulation and an expiry review pursuant to Article 11(2) of that Regulation by a notice published on 21 September 2010 and 27 September 2011 respectively in the *Official Journal of the European Union*.

3. Investigations

3.1. Investigation periods

- (8) The expiry review investigation of continuation or recurrence of dumping and injury covered the period from 1 July 2010 to 30 June 2011 (‘the review investigation period’ or ‘RIP’). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2008 up to the end of the RIP (‘period considered’).
- (9) The review investigation period for the partial interim review limited in scope to the examination of dumping with regard to Greenwood Houseware (Zhuhai) Ltd covered the period from 1 April 2009 to 30 June 2010.

3.2. Product concerned and like product

- (10) The product concerned in both investigations is 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 PRC and Thailand (‘the product concerned’), currently falling within CN codes ex 3923 21 00, ex 3923 29 10 and ex 3923 29 90.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 270, 29.9.2006, p. 4.

⁽³⁾ OJ L 304, 22.11.2007, p. 5.

⁽⁴⁾ OJ L 76, 19.3.2008, p. 8.

⁽⁵⁾ OJ L 67, 12.3.2009, p. 5.

⁽⁶⁾ OJ L 131, 18.5.2011, p. 2.

⁽⁷⁾ OJ L 131, 18.5.2011, p. 10.

- (11) As far as the product produced and sold in the Union market is concerned, no conclusive findings could be made with regard to Article 1(4) of the basic Regulation, due to the insufficient cooperation of the Union industry in the expiry review (see Section B).

(12) As far as the product produced and sold on the domestic market by the applicant of the interim review is concerned, as well as the product produced and sold in a potential analogue country in the framework of the interim review, it is noted that the investigation did not reach any conclusions given the termination of both current investigations and the repeal of the existing measures (see Section B).

3.3. Parties concerned by the investigation

(13) The Commission officially advised Greenwood Houseware (Zhuhai) Ltd and the representatives of the PRC of the initiation of the partial interim review limited in scope to the examination of dumping. Both parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(14) The Commission officially advised the Union producers who lodged the request for the expiry review, other known Union producers and associations of Union producers, exporting producers, importers and users known to be concerned as well as their associations. Producers in the possible analogue countries, i.e. India, Indonesia, Malaysia, Turkey and USA and the representatives of the PRC and Thailand were also informed of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(15) All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

3.4. Sampling of Union producers

(16) In view of the large number of Union producers involved in the expiry investigation, the application of sampling was envisaged in the relevant notice of initiation in accordance with Article 17 of the basic Regulation.

3.4.1. Description of the Union industry

(17) The sector of plastic sacks and bags production in the Union is highly fragmented with a very large number of producers of different sizes, including a large sector of small producers spread over several Member States.

(18) The information provided at the initiation stage in the request indicated that large or medium-sized companies represented around 25 % of the cooperating producers and around 70 % of the cooperating Union production. Accordingly, small companies represented around 75 % of the cooperating producers and around 30 % of their production.

(19) In addition, the information showed that the Union production is spread among several Member States, but largely concentrated in Germany, France, Spain and Italy.

3.4.2. Sampling methodology

(20) Article 3(2) of the basic Regulation requires that a determination of injury shall be based on positive evidence and shall involve an objective determination of, inter alia, the impact of dumped imports on the Union industry. Any findings of injury and the information collected for that purpose would thus have to be representative of the entire Union industry.

(21) It follows that the high level of fragmentation of the plastic sack and bags sector had to be taken into consideration in the sampling exercise. In order to be able to draw conclusions that would be representative of the entire Union industry, it was considered necessary to ensure that also the situation of the small companies was properly reflected.

(22) Consequently, for the purpose of selecting a representative sample of Union producers, the cooperating Union producers were divided into two segments based on the volume of their yearly production: large or medium-sized companies with production above 15 000 tonnes on the one hand and small companies with production below 15 000 tonnes on the other hand. It was envisaged to sample the largest companies within each segment.

(23) Furthermore, the producers' geographical spread amongst Member States as described in recital 19 was also taken into consideration.

3.4.3. Procedure for selecting the provisional sample

(24) The procedure to obtain the information necessary for the selection of the sample of Union producers emanated from the information obtained at initiation stage. In addition, the relevant notice of initiation invited all other producers to make themselves known should they wish to be included in the sample. Following the publication of the notice of initiation, no company contacted the Commission requesting to be included in the sample.

(25) As a result of the criteria explained in recitals 20 to 23, five Union producers operating in four Member States were selected to be in the sample. They were the largest producers of each of the two segments, taking into account size and geographical location. Three sampled companies belong to the segment of large or medium-sized companies, two to the segment of small companies.

(26) The selected companies also reflected the geographical spread amongst Member States in terms of production, with Germany and France representing the companies operating in the large or medium-sized segment and Spain and Italy those companies operating in the small segment.

- (27) The sample thus selected represented 22,5 % of total production of plastic sacks and bags by the cooperating producers and 12,3 % of the total estimated Union production, based on the total Union production figures reported in the request.
- (28) At the initiation stage, all known Union producers were informed about the composition of the provisional sample and were given the possibility to comment. No comments were received.

B. SITUATION OF THE UNION INDUSTRY

- (29) It is recalled that the determination of injury must be an evidence-based assessment of the effect of the dumped imports on the Union industry.
- (30) The fragmentation of the industry therefore had to be taken into account in the sample and questionnaires requesting general data mainly regarding macroeconomic indicators per Member State were in addition sent to all known Union associations of producers in order to obtain the necessary information needed.
- (31) In terms of the sample of Union producers, the level of representativity was seriously affected by the fact that the largest sampled producer operating in the segment of large or medium-sized companies and one producer operating in the segment of small companies informed the Commission that they did not wish to respond to the questionnaire. This meant that only three out of the five sampled companies continued to cooperate and that no or only partial information would be provided for the identified segments and producing Member States.
- (32) Numerous attempts were therefore made to select a new representative sample that would respect the selection methodology outlined in recitals 17 to 28.
- (33) In this respect a total of six additional Union producers, that had expressed their willingness to be sampled, were identified as possible replacements for the two companies that had withdrawn the cooperation from the sample. These six additional companies were approached and requested to cooperate by filling out the Union producer's questionnaire.
- (34) Out of these six additional Union producers approached, only one producer, representing the segment of large or medium-sized companies, eventually agreed to cooperate. No replacement was found to represent the production in Germany, one of the largest Member States in terms of production of plastic sacks and bags.
- (35) Therefore, it was not possible to select a new sample in accordance with Article 17(4) of the basic Regulation, as the requisite representativity in terms of the identified segments and producing Member States could not be reached.

- (36) Due to the low cooperation on the part of the sampled Union producers, it could not be reasonably concluded that the data compiled from the cooperating companies reflected the situation of the entire Union industry and therefore it was not possible to properly assess whether the conditions specified in Article 3(2) of the basic Regulation were met.
- (37) Following the attempts to select a new sample, one group of producers reiterated their commitment to taking an active part in the expiry review, restating the importance of maintaining the anti-dumping measures in force for the Union industry. This group of producers expressed regrets that only one amongst them was invited by the Commission to complete the questionnaire. In this context it should be noted that the willingness of these companies to cooperate was fully considered and they were all included in the group of companies that were taken into account for the selection of the new sample. It is recalled, however, that in order to ensure the required representativity, the selection method, as described in recitals 17 to 28 had to be respected also for the new sample. Since only one of the companies of this group fulfilled the criteria mentioned above, only that company could be invited to be part of the sample. The other companies were of a size or situated in Member States that were already sufficiently represented in the sample.
- (38) Certain information on country-wide production, sales figures and other key macro indicators were received from the national associations of the Netherlands, Spain, Italy and partially France. However, the European Plastics Converters Association (EuPC) did not provide the information requested in the specific questionnaire sent to them and therefore, no conclusive data could be collected on a macroeconomic level across the Union.

C. TERMINATION OF THE PROCEEDINGS

- (39) In light of the above and in accordance with Article 9 (2) of the basic Regulation, the expiry review concerning imports of plastic bags from the PRC and Thailand should be terminated.
- (40) The low level of cooperation of the Union producers and the lack of a representative sample has prevented the Commission from being able to assess whether the conditions specified in Article 3(2) and Article 11(2) of the basic Regulation are met. It can thus not be concluded whether the expiry of the measures in place would be likely to lead to a continuation or recurrence of injury and the investigation should be terminated on these grounds.
- (41) It follows from the above that the interim review is without purpose and should be terminated as well.

- (42) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the termination of the two investigations. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.
- (43) One interested party claimed that since it was proposed to terminate the review due to lack of cooperation of the Union producers, the anti-dumping measures should be repealed with retroactive effect, i.e. as of 30 September 2011, when the measures in force should have initially expired.
- (44) In this context it is recalled that the request for the review was made by Union producers representing more than 30 % of the total Union production in accordance with the basic Regulation. Moreover, Article 11(2) of the basic Regulation explicitly stipulates that measures shall remain in force pending the outcome of the review. The findings mentioned in recital 40, however, did not have an impact on the legality of the initiation of the review as such which means that the provisions in Article 11(2) stipulating that measures shall remain in force pending the outcome of the review continue to apply. This argument therefore had to be rejected.
- (45) A number of Union producers also responded to the disclosure by stating they were withdrawing as complaining producer. However, taking into account other Union producers maintained their position and given the fact that the standing requirements as described in recital 5 were fulfilled at the time of the initiation of the case, this would not have an impact on the procedure.

- (46) In view of the foregoing, none of the comments received were such as to alter the above conclusions. It is therefore concluded that the anti-dumping proceeding concerning imports into the Union of certain plastic sacks and bags originating in the PRC and Thailand should be terminated and measures be repealed. It follows that the ongoing interim review referred to in recital 3, will be terminated at the same time as this expiry review,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping measures concerning imports of certain plastic sacks and bags, currently falling within CN codes ex 3923 21 00, ex 3923 29 10 and ex 3923 29 90 and originating in the People's Republic of China and Thailand are hereby repealed and the proceeding concerning these imports is terminated.

Article 2

The partial interim review of the anti-dumping measures applicable to imports of certain plastic sacks and bags, currently falling within CN codes ex 3923 21 00, ex 3923 29 10 and ex 3923 29 90 and originating in the People's Republic of China initiated pursuant to Article 11(3) of Regulation (EC) No 1225/2009, is hereby terminated.

Article 3

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, 10 July 2012.

For the Council
The President
V. SHIARLY
