COUNCIL REGULATION (EC) No 249/2008

of 17 March 2008

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

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 Articles 9 and 11(3) thereof,

Having regard to 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 [2],

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

Whereas:

1. EXISTING MEASURES

(1) Following an investigation (the original investigation), the Council, by Regulation (EC) No 1425/2006, imposed a definitive anti-dumping duty on imports of certain plastic sacks and bags originating, *inter alia*, in the People's Republic of China.

1.1. Initiation of an interim review

(2) On the initiative of the Commission, a partial interim review of the above-mentioned Regulation was initiated for Xinhui Alida Polythene Limited (Xinhui Alida or the company), a Chinese exporting producer subject to the anti-dumping measures in force. This partial interim review was initiated on the initiative of the Commission based on *prima facie* evidence provided by the company.

(3) This review was initiated pursuant to Article 11(3) of the basic Regulation. In the evidence that the Commission received from Xinhui Alida, the company claimed that as far as they were concerned, the circumstances on the basis of which measures were established had changed and that these changes were of a lasting nature.

(4) Information at the Commission's disposal indicated that *prima facie* market economy conditions prevailed for the company as demonstrated by the company's claim that it had fulfilled the criteria of Article 2(7)(c) of the basic Regulation. The company also alleged that their sales pattern, both in terms of quantity and destination, had changed in a lasting way since the period on which the original measures were established, as did the installed capacity. They further alleged that a comparison of normal value based on their own costs and prices and their export prices to the Community would lead to a reduction of dumping significantly below the level of the current measures and provided *prima facie* evidence thereof.

(5) In this context, they claimed that the continued imposition of measures at the existing level, which were based on the level of dumping previously established, was no longer necessary to offset dumping.

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission published a notice (Notice of Initiation) [3] and commenced an investigation, limited in scope to the examination of dumping.

1.2. Parties concerned by the investigation

(7) The Commission officially advised Xinhui Alida and its related companies, as well as 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.

(8) The Commission also sent questionnaires to the applicant and its related companies and received replies within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping and Market Economy Treatment and carried out verification visits at the premises of the following companies:

— Xinhui Alida Polythene Limited, Xinhui, China,

— Horneman Chemplas (Far East) Limited, Hong Kong,

[1] 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).

[2] OJ L 270, 29.9.2006, p. 4. Regulation as amended by Regulation (EC) No 1356/2007 (OJ L 304, 22.11.2007, p. 5).

[3] OJ C 54, 9.3.2007, p. 5.

— British Polythene Industries plc, Stockton-on-Tees, United Kingdom,

— Thai Plastic Bags Industries Co., Ltd, Nakonpathom, Thailand,

— Thai Griptech Co., Ltd, Samae-Dum, Bangkok, Thailand,

— Sahachit Watana Co., Ltd, Nongkaem, Bangkok, Thailand.

1.3. **Review investigation period**

(9) The investigation of dumping covered the period from 1 July 2005 to 30 June 2006 (the review investigation period or RIP).

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(10) The product concerned by the current review is the same as that in the original investigation, i.e. 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 currently classifiable 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).

2.2. **Like product**

(11) The current review has shown that Xinhui Alida made no sales on the Chinese domestic market and therefore no like product was produced.

3. **MARKET ECONOMY TREATMENT (MET)**

(12) In all anti-dumping investigations concerning imports originating in the PRC, normal value for exporting producers found to meet the criteria laid down in Article 2(7)(c) shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation. Briefly, and for ease of reference only, these criteria are summarised below:

— business decisions and costs are made in response to market conditions and without significant State interference,

— accounting records are independently audited, in line with international accounting standards and applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— legal certainty and stability is provided by bankruptcy and property laws,

— currency exchanges are carried out at the market rate.

(13) The Commission's services concluded that Xinhui Alida demonstrated that they fulfilled the five criteria of Article 2(7)(c) of the basic Regulation, and proposed therefore that they be granted MET.

(14) Both Xinhui Alida and the Community industry were given an opportunity to comment on the above findings.

(15) The Community industry contested the granting of MET to Xinhui Alida, stating that the governance of the company was unclear and that the company had destroyed certain documents required for them to prove their eligibility for MET.

(16) The Articles of Association of the company provide for the nomination of directors by the shareholders in proportion to their shareholding in Xinhui Alida, but, at present, the two shareholders appoint the same number of directors, despite not having the same number of shares. This does not, however, make the governance of the company unclear. The smaller shareholder is majority-owned by the larger one, thus the composition of the Board of Directors reflects the actual ownership of Xinhui Alida.

(17) In addition, it was argued that the company was unable to provide original bank transfer slips for the original payment of capital, the payment of the land use right, and the payment to the State for their shareholding when the company became entirely privately owned, since it is not company policy to retain documents for more than seven years. However, the company was able to provide evidence from audited sources regarding these transactions and, given the passage of time since they took place, the absence of the original bank transfer slips was not considered exceptional.

(18) These arguments were considered, but, as no evidence was submitted to change the Commission's decision to grant the company MET, the arguments of the Community industry were therefore rejected.

(19) The Advisory Committee was consulted and the parties directly concerned were informed accordingly. The main arguments raised by the Community industry have already been addressed above.

4. DUMPING

4.1. Normal value

4.1.1. *Methodology applied for the determination of normal value*

(20) In accordance with Article 2(2) of the basic Regulation, it was first examined whether the domestic sales of the like product to independent customers by the exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community. Given that Xinhui Alida had no domestic sales during the RIP the normal value of the company was constructed in accordance with Article 2(3) as described below.

4.1.2. *Determination of normal value*

(21) Given the absence of any domestic sales, normal value was constructed on the basis of the provisions of Article 2(3) of the basic Regulation by adding selling, general and administrative (SGA) expenses incurred and weighted average profit to the average manufacturing cost of Xinhui Alida during the RIP.

(22) Xinhui Alida claimed that their cost of manufacturing should be adjusted to take into account the difference in depreciation policy between them and their parent company in the United Kingdom, British Polythene Industries plc ('BPI') with whom their accounts are consolidated. Xinhui Alida provided evidence to show that BPI adjusted the depreciation of their assets as part of the consolidation process and also claimed that the depreciation rates in China were fixed by law, thereby stopping the company from aligning their depreciation policies.

(23) This claim was rejected, partially because the law in China changed in 2001 and no longer fixes depreciation rates, and partially because the cost of manufacturing of Xinhui Alida for the RIP is that set out in their audited accounts, and not a cost adjusted to allow consolidation to take place in the United Kingdom. Moreover, the assets concerned were also examined and found to be mainly still in use after 10 years.

(24) Xinhui Alida also claimed that the cost of raw materials should be adjusted to take account of the fact that part of the amount paid to their supplier, Horneman Chemplas (Far East) Limited, was in fact paid to their holding company Venture Hong Kong, which is part-owned by Horneman Chemplas and the remainder by British Polythene Industries plc (BPI). This claim was also rejected. Firstly, although Horneman Chemplas and Xinhui Alida are related parties, the price charged by Horneman Chemplas to Xinhui Alida was found to be a reasonable market price, including a small mark-up by Horneman on the price at which it had purchased the goods in order to cover its costs. Moreover, the amounts were not paid straight back by Horneman to Xinhui Alida in the form of e.g. a volume rebate or credit notes, but to Venture Hong Kong which transferred them to Xinhui Alida as capital injection(s) and other payments. They therefore can not be qualified as a standard price rebate granted by a seller to a buyer.

(25) The data for selling, general and administrative expenses and weighted average profit were taken from companies who responded to a questionnaire sent to companies in the analogue country as set out below.

4.1.3. *Analogue Country*

(26) Data from the analogue country was used to construct the normal value for Xinhui Alida given the absence of domestic sales, in line with the provisions of Article 2(6)(c) of the basic Regulation. The Notice of Initiation made provision for Malaysia to be the analogue country, but no companies agreed to cooperate with the investigation. However, cooperation was received from three companies in Thailand who had domestic sales. Weighted average SGA and profit was calculated from data received from them and verified at their premises.

4.2. Export price

(27) Whenever the exports of Xinhui Alida were made directly to independent customers in the Community, the export price was established on the basis of the prices actually paid or payable for the product concerned in the RIP in accordance with Article 2(8) of the basic Regulation.

(28) However, the vast majority of sales by Xinhui Alida were either to their related company in Hong Kong, Horneman Chemplas, for final onward sale to the Community, or to their related company in the United Kingdom, BPI, for final sale within the Community. As regards these export sales to the Community, the export price was established on the basis of Article 2(9) of the basic Regulation, i.e. using the resale prices actually paid or payable to the related company by the first independent buyer in the Community in the RIP adjusted for all costs incurred between importation and resale and for profits.

4.3. **Comparison**

(29) The comparison between the normal value and the export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. On this basis, allowances for differences in discounts, rebates, commissions, transport costs, insurance, handling charges, packaging, credit costs, bank charges and import duties were made where applicable and justified.

(30) As the related importer in the United Kingdom has functions similar to those of an agent working on a commission basis, an adjustment to the export price for a commission was made in accordance with Article 2(10)(i) of the basic Regulation. The level of the commission was calculated based on direct evidence pointing to the existence of a mark-up and selling expenses related to such functions.

4.4. **Dumping margin**

(31) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned.

(32) Xinhui Alida's dumping margin expressed as a percentage of the net, free-a-Community-frontier price, duty unpaid, was found to be 4,3 %.

5. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

(33) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be said to be of a lasting nature.

(34) Firstly, it should be noted that the company was able to prove that it should be granted MET, and was therefore eligible for its own individual dumping margin. The grounds on which they were granted MET are to be considered lasting as they refer to the long-term structure and business model of the company. Secondly, information was requested regarding the evolution of product types and price fluctuation after the end of the RIP in June 2006. The company provided evidence to show that raw material prices increased in the latter half of 2006, falling back to the end of 2006 but still above their level during the RIP. Given the parent company's policy on transfer pricing between Xinhui Alida and themselves, it is clear that during the latter half of 2006 the transfer price remained stable whilst raw material prices rose substantially. BPI have also demonstrated that their onward sales prices remained stable during the latter half of 2006, making the dumping margin calculated for the RIP clearly valid for the remainder of the calendar year 2006.

(35) The company alleged that their sales pattern, both in terms of quantity and destination, changed in a lasting way since the original investigation period of April 2004 to March 2005.

(36) Evidence obtained during the investigation showed that the behaviour of the company, including the circumstances that led to the initiation of this review, were unlikely to change in the foreseeable future in a manner that would affect the findings of the current review. This would therefore suggest that the changes concerned were of a lasting nature and therefore the conclusions of the review were long-lasting.

6. **ANTI-DUMPING MEASURES**

(37) In the light of the results of the investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from Xinhui Alida to 4,3 %.

7. **DISCLOSURE**

(38) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend an amendment to Council Regulation (EC) No 1425/2006 and were given an opportunity to comment.

(39) The company contested the findings disclosed where various adjustments claimed by the company had been rejected, being the calculation of depreciation in China, the treatment of an exchange rate gain made in the United Kingdom and an alleged raw material rebate. However, the company provided no new evidence to substantiate their claims and therefore these claims were again rejected.

(40) The Community industry requested further information regarding the calculation of the constructed normal value using data from Thailand, but provided no evidence to dispute or contest the calculation or methodology used,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Council Regulation (EC) No 1425/2006 is hereby amended by adding the following:

Country	Company	Rate of duty (%)	TARIC additional code
The People's Republic of China	Xinhui Alida Polythene Limited, Xinhui	4,3 %	A854

The list of companies in Annex I of Council Regulation (EC) No 1425/2006 is hereby amended by removing the following:

XINHUI ALIDA POLYTHENE LIMITED	Xinhui

Article 2

This Regulation shall enter into force on the day following 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, 17 March 2008.

For the Council
The President
I. JARC