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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1763/2002

of 30 September 2002

amending Regulation (EC) No 1950/97 imposing definitive anti-dumping measures on imports of sacks and bags made of polyethylene or polypropylene originating, *inter alia*, in India

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 Article 11(3) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Previous investigations**

(1) By Regulation (EC) No 1950/97 [2], the Council imposed definitive anti-dumping measures on certain imports of sacks and bags made of polyethylene and polypropylene (hereinafter referred to as the product concerned) originating, *inter alia*, in India.

(2) This Regulation was subsequently amended by Regulations (EC) No 96/1999 [3] and (EC) No 2744/2000 [4] with the purpose of determining dumping margins for new exporters as foreseen in Article 11(4) of the basic Regulation.

2. **Present investigation**

(i) *Initiation*

(3) The European Association for Textile Polyolefins (hereinafter referred to as the applicant) lodged a request for an interim review, limited to the aspects of dumping for the product concerned originating in India, pursuant to Article 11(3) of the basic Regulation, on behalf of European producers representing a major proportion, in this case 65 %, of the total Community production of the product concerned.

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission published a notice of initiation in the *Official Journal of the European Communities* [5] and commenced the investigation.

(ii) *Investigation and sampling*

(5) The Commission officially advised the exporting producers known to be concerned, the representatives of the originating country, and the applicant, of the initiation of the review investigation, and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) A number of exporting producers in the countries concerned, as well as Community importers made their views known in writing. All parties who so requested were granted the opportunity to be heard.

(7) The Commission has determined that the number of exporting producers of the product concerned in India has increased significantly since the original investigation. It has therefore been decided to apply sampling techniques in accordance with Article 17 of the basic Regulation.

(8) In order to enable the Commission to select a sample, exporting producers and representatives acting on their behalf were requested to make themselves known within 15 days of the date of publication of the notice of initiation and to provide basic information on their production, domestic and export sales. The authorities of the country concerned were also contacted by the Commission with a request to assist it in the selection of the sample.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 276, 9.10.1997, p. 1.
[3] OJ L 11, 16.1.1999, p. 1.
[4] OJ L 316, 15.12.2000, p. 67.
[5] OJ C 26, 26.1.2001, p. 2.

(9) A total of 45 companies replied to the sampling questionnaire within the time limits. Of those, 22 had production and sales to the Community of the product concerned during the period between 1 December 1999 and 30 November 2000 (hereinafter referred to as the investigation period or IP).

(10) The choice of the sample was made in consultation with the representatives of the companies and the authorities of the country concerned. An agreement was reached on a sample of eight companies covering more than 80 % of the total exports of the product concerned to the Community during the IP.

(11) Nine companies not selected in the sample have requested individual examination. In view of the large number of requests which was even exceeding the number of companies selected in the sample, it was considered that such individual examinations would be unduly burdensome in the sense of Article 17(3) of the basic Regulation. Therefore, no such requests could be granted.

(12) The Commission sent questionnaires to the companies selected in the sample, and carried out verifications at the premises of the following selected companies in India:

— Gilt Pack Ltd, Indore,

— Hyderabad Polymers Private Ltd, Hyderabad,

— Kanpur Plastipack Ltd, Kanpur,

— Neo Sack Ltd, Indore,

— Polyspin Private Ltd, Rajapalayam and its related company Polyspin Exports Ltd, Rajapalayam,

— Pithampur Poly Products Ltd, Indore,

— Shankar Packaging Ltd, Vadodara.

(13) Subsequent to the verification carried out in India, the Commission collected information from importers of the product concerned in the Community. The following importers were also visited:

— Cojubel NV, Lendelede, Belgium,

— Eurea BVBA, Antwerp, Belgium,

— Rova NV, Oudenaarde, Belgium,

— Texbern SARL, Lyon, France,

— Markopulos SA, Athens Greece,

— Alex Pak SA, Athens, Greece.

(14) The Commission also collected information from and visited customs' authorities in the Member States.

(15) Owing to the complexity of the case and the difficulties found, the duration of the investigation has taken more than 12 months.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(16) The product covered by the current review is the same product as the one under consideration in Regulation (EC) No 1950/97.

(17) The product concerned is woven sacks and bags of a kind used for the packaging of goods, not knitted or crocheted, obtained from a polyethylene or polypropylene strip or the like of woven fabrics, weighing 120 g/m² or less and originating in India. This product is currently classifiable within CN codes 6305 32 81, 6305 33 91, ex 3923 21 00, ex 3923 29 10 and ex 3923 29 90.

2. Like product

(18) It was established that the sacks and bags sold on the Indian market and the sacks and bags exported from India to the Community were identical, or closely resembling, in terms of physical characteristics and end-uses. Therefore, these sacks and bags were considered alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Non-cooperation

(19) The Commission's investigation revealed that four exporters representing the majority of exports from India supplied false and misleading information, and in a number of cases even deliberately forged and manipulated documents. A number of irregularities has been established including the incorrect reporting of product types, specifications, export destination, quantities and/or values on invoices and shipping documents in order to increase the average export price to non-dumped levels, the deliberate omission of transactions, or the presentation of unreliable accounting information. Product descriptions, quantities and weights found on the official documents provided by unrelated importers and custom authorities were often different from the ones submitted during the on-the-spot verification and from the information that had been reported to the Commission in the questionnaire reply. Evidence was also received of at least two attempts to persuade importers to submit manipulated documents to the Commission.

(20) The non-cooperating exporters have been informed individually in detail of the Commissions findings in this respect. Some of them nevertheless argued that the verified data for domestic sales and cost of production should not be disregarded because those irregularities would relate only to the export data.

(21) However, the nature and extent of the false and misleading information cast doubt on the integrity of all the data submitted by the companies, be it for the export or domestic market. It has therefore been decided to entirely disregard all the information provided and use other information available in respect of these four companies, in accordance with Article 18 of the basic Regulation. No individual dumping margin was calculated for these companies.

(22) For another company, whose information on the costs of production could not be considered entirely reliable, it was necessary to disregard some of the information provided and make partial use of facts available, in accordance with Article 18(1) of the basic Regulation. Findings were nevertheless mostly based on the information provided by the company.

(23) For the remaining three companies, it was considered that reasonably accurate findings could be established on the basis of the information provided, adjusted wherever necessary in view of the results of the on-the-spot verifications, in order to arrive at a dumping determination.

2. **Normal value**

(24) Normal value was established according to Article 2 of the basic Regulation. Therefore, it was first established whether the companies' total domestic sales of the like product were representative in comparison with their total export sales of the product concerned to the Community. In accordance with Article 2(2) of the basic Regulation, and since the total domestic sales volume exceeded 5 % of the total export sales volume to the Community, the domestic sales of the like product were found to be representative for three of the four companies for which an individual dumping margin was calculated.

(25) A similar test was subsequently performed for each of the product types sold domestically that were identical or directly comparable to the types sold for export to the Community. For each product type, it was established that the domestic sales were sufficiently representative in accordance with Article 2(2) of the basic Regulation, when the sales volume of that type exceeded 5 % of the sales volume of the identical or comparable types exported to the Community.

(26) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of the profitable sales to independent customers of the type in question. Domestic sales were considered profitable when the net sales value was equal or above the calculated cost of production of each type concerned (hereinafter referred to as profitable sales).

(27) As far as the costs of production are concerned, none of the companies had an established cost accounting system. A number of corrections had to be introduced to the cost allocation methods, which the companies had elaborated exclusively for the purpose of the present investigation, in particular regarding the allocation of raw material costs, on the basis of the findings of the on-the-spot verification.

(28) The cost of production of each product type sold on the domestic market, corrected as explained above, was compared to its net domestic sales price. In cases where profitable sales of each type represented 80 % or more of the total sales volume, the normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether all these sales were profitable or not. In cases where the proportion of profitable sales amounted to less than 80 %, but at least 10 % of total domestic sales, normal value was established as a weighted average of the domestic prices of profitable sales.

(29) In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value. This was the case for all but one product type of one company.

(30) In the absence of domestic sales made by other producers in the ordinary course of trade, normal value could not be established on the basis of prices of other sellers or producers.

(31) Normal value was therefore constructed in accordance with Article 2(3) of the basic Regulation, by adding to the manufacturing cost of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative costs (hereinafter referred to as 'SG&A') and a reasonable margin of profit.

(32) For the companies with a representative volume of domestic sales their own SG&A expenses were used. One company did not have a representative volume of domestic sales. For this company the weighted average of the actual amounts determined for the other three companies subject to investigation in respect of production and sales of the like product in the domestic Indian market was used, in accordance with Article 2(6)(a) of the basic Regulation.

(33) None of the cooperating companies had profitable sales representing 10 % or more of total domestic sales volume of the product concerned. In the absence of sales of the same general category of products from which a profit rate could have been derived, the Commission decided to use a profit rate of 5 % according to Article 2(6)(c) of the basic Regulation. This is considered a conservative estimate and is in line with the findings of the previous investigations.

3. **Export price**

(34) All companies made their export sales to the Community directly to independent importers. In accordance with Article 2(8) of the basic Regulation, their export prices were therefore established on the basis of the prices actually paid or payable by these independent importers.