COMMISSION REGULATION (EEC) No 2051/90

of 17 July 1990

imposing a temporary anti-dumping duty on imports of woven polyolefin sacks originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 1 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), and in particular Article 11 thereof,

Following consultations within the advisory committee, as provided for in Regulation (EEC) No 2423/88,

Whereas :

A. PROCEDURE

(1) In September 1988 the Commission received a complaint from the European Association for Textiles Polyolefin (EATP) (hereinafter referred to as 'the complainant') on behalf of 11 of the Community's largest producers, whose combined production comprised a major part of total Community production of polyolefin sacks (hereafter referred to as 'sacks'), in respect of imports of this product originating in the People's Republic of China.

(2) The complaint included sufficient evidence of dumping and consequent major injury to justify initiating an investigation. The Commission therefore announced in a notice published in the *Official Journal of the European Communities* (2), the initiation of an anti-dumping proceeding in respect of the product in question, which falls within CN code 6305 31 91.

(3) The Commission officially notified the principal exporters and importers concerned, and the complainant, giving all concerned the opportunity to submit their views in writing and request a hearing.

(4) The main organization responsible for the export of sacks from China wrote giving the views of the Chinese exporters. This organization, the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Produce and Animal By-products, also passed on the comments of the following nine exporters :

— Shandong Native Produce Import and Export Corporation,

— Shanghai Native Produce Import and Export Corporation,

— Jiangsu Native Produce Import and Export Corporation,

— Tianjin Native Produce Import and Export Corporation,

— Hubei Native Produce Import and Export Corporation,

— Zheijiang Native Produce and Animal Byproducts Import and Export Corporation,

— Shanghai Stationery and Sporting Goods Import and Export Corporation,

— Zheijiang Light Industrial Products Import and Export Corporation,

— Wuhan Light Industrial Products Import and Export Corporation.

These nine exporters were said to account for about 90 % of sacks exported from China to the Community and details of sack exports by other Chinese exporters were not available.

Since China is not a market economy country within the meaning of Article 2 (5) of Regulation (EEC) No 2423/88 and the Chinese exporters' comments were presented in a single document, and also since not all Chinese exporters were identified, the Commission felt that all Chinese exports should be regarded as a whole for the purposes of the proceeding.

(5) The Commission also had to take into account when beginning the investigation the fact that China does not have a market economy, and find a reference country for calculating normal value. The complainant had proposed taking the domestic market price of sacks in Morocco as a reference. Some of the importers who had submitted views and the Chinese organization criticized this choice

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 21, 27. 1. 1989, p. 2.

and proposed Turkey or the Philippines as a reference country. The Moroccan producer refused to cooperate in the investigation. The Commission therefore had to find another suitable market economy country for reference. In addition to Turkey and the Philippines, producers were contacted in India, Yugoslavia and Thailand. Three Indian firms finally agreed to cooperate with the investigation. The Commission considered India a suitable reference country in view of the type of product, production conditions and the country's level of development.

(6) The majority of the producers backing the complaint and several importers made written submissions. Other importers also commented.

(7) The Commission gathered and verified all the data it deemed necessary to determine whether dumping had occurred and assess the injury caused. It visited the following firms to check the data they had submitted :

(a) *Community producers :*

— Cotesi, Carvalhos, Portugal,

— Quimigal, Lisbon, Portugal,

— Keler, L'Ametila del Vallés, Spain,

— Commercial Saquera, Pego, Spain,

— Condepols, Alcalá la Real, Spain,

— Sintéticas del Sur, Úbeda, Spain,

— Saint-Frères, Beauval, France ;

(b) *Producers in the reference country*

— Auroplast India, Bombay, India,

— Paharpur Plastics, Ghaziabad (Uttar Pradesh), India,

— Kanpur Plastipack, Kanpur, India ;

(c) *Community importers*

— De Swann Bonnist, Amsterdam, Netherlands,

— Block, Arendonk, Belgium.

The period chosen by the Commission for the dumping investigation ran from 1 January to 31 December 1988.

(8) Since it was not possible to use Morocco as a reference country, more time was required to find firms willing to cooperate in the Commission investigation. It was not therefore possible to complete the investigation within the usual period of one year after initiation of the proceeding.

B. PRODUCT CONCERNED, LIKE PRODUCT AND COMMUNITY INDUSTRY

(a) Product concerned

(9) The products covered by the notice of initiation of the proceeding are sacks woven from polyolefin strips and weighing less than 120 g per m^2.

(10) Polyolefin strips are manufactured from either polypropylene or high-density polyethylene ; the thousands of different types of sack manufactured from either raw material have similar physical and chemical characteristics. The sacks are used for packing industrial or agricultural products such as fertilizers or cereals. Since the sacks' basic characteristics, whether physical, chemical or technical, and their purpose, are similar, the Commission considered this Regulation to concern all sacks, regardless of their raw material (polypropylene or polyethylene) and use.

(11) All the sacks concerned fall within CN code 6305 31 91.

(b) Like product

(12) When defining the like product, the Commission found that there were no physical or chemical differences between the sacks exported to the Community by the Chinese and the corresponding sacks sold by Community producers. During the period of the investigation all sacks were manufactured from the same raw material, polypropylene.

Although the Community industry produced a broader range of sacks than that exported from China to the Community, the basic physical and technical characteristics and principal uses of both Community and Chinese sacks are identical. The differences between the sacks imported from China and those produced in the Community are that the former comprise plain and lined sacks while the latter also include other types, e. g. coated sacks and sacks lined with paper or gauze. Since, however, the sacks' similarities in respect of both characteristics and use outweigh their differences, the Commission deemed Community-produced sacks and Chinese sacks to be like products.

(c) Community industry

(13) The Commission observed that the producers on whose behalf the complaint had been made, who had cooperated with the Commission and produced the sacks in question during the investigation period, manufactured a major share of the Community's total output of like products during this period.

The Commission therefore held them to be the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

C. DUMPING

(a) Normal value

(14) The Commission checked that the three Indian firms cooperating in the investigation manufactured a range of products which allowed their production to be satisfactorily compared with the Chinese exports. The Commission found India to be a suitable reference country in this respect.

(15) The Commission found that normal value could not be calculated accurately and fairly on the basis of the price of the product on the Indian market or of the Indian like product sold abroad. The sacks were sold to the Indian consumer at less than cost price. Similarly, the prices at which the three cooperating firms actually sold the sacks outside India proved to be of little significance. It was therefore necessary to calculate normal value on the basis of the constructed value of the like product in India.

(16) Amongst the great number of sacks produced, it was possible to identify several types by characteristics and specifications such as a polyethylene or paper lining and whether or not they were coated. The investigation revealed the cost per kilogram of producing the sacks to be almost identical, regardless of the type. Furthermore, during the investigation period the Chinese exported only plain and polyethylene-lined sacks. The Commission therefore thought it fair to calculate normal value on the basis of the cost per kilogram of producing, on the one hand, plain, and on the other, polyethylene-lined sacks.

(17) When calculating production costs, the Commission took account of the cost of raw materials and manufacturing, and the general, administrative and sales expenses of the three Indian producers, arriving at a weighted average for the respective costs of plain and lined sacks. To obtain the constructed value for each type, a profit margin was added to production costs. The Commission calculated the profit margin on a reasonable basis. It considered the minimum margin necessary to ensure a rate of return on capital investment comparable to, though higher than, that offered by long-term interest rates in India. This margin was also sufficient to ensure a small though adequate rate of return for sales at different levels of the market, including those to wholesalers. The profit margin established on these terms was 5 %.

(b) Export prices

(18) The Commission considered plain and lined sacks separately when determining the export price. The export price of lined sacks was calculated on the basis of the prices actually paid or payable on export to the Community by the importers cooperating with the investigation. The volume of lined sacks whose prices were studied represented 60 % of total imports of this type of sack.

However, the price actually paid or payable when plain sacks were exported to the Community, as checked at the premises of the two importers cooperating with the investigation, could not be regarded as significant in itself because of the small quantities involved. The Commission therefore judged it appropriate, when determining the export price of plain sacks, to calculate a weighted average from the prices quoted by the Chinese exporters and the prices seen to have been paid by the cooperating importers. The volume of plain sacks whose prices were checked at the importers represented 11 % of total imports of this type of sack.

D. COMPARISON

(19) The normal value and the export price were compared throughout at the same stage of marketing. Account was taken of differences affecting the comparability of prices, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88.

(20) No physical difference affecting the comparability of the prices of equivalent Indian and Chinese sacks could be discerned.

(21) The Commission compared lined sacks, on the one hand, and plain sacks on the other. The normal value and export price of lined sacks were compared on a transaction-by-transaction basis.

The normal value of plain sacks was compared with an export price based on weighted averages. The application of weighted averages was not deemed likely to affect the outcome of the investigation in view of the special circumstances observed during the proceeding.

E. DUMPING MARGIN

(22) Preliminary examination of the evidence shows that Chinese exporters are dumping woven light-polyolefin sacks. The dumping margin equals the difference between the calculated normal value and the export price in the Community and amounts, on a weighted average basis, to 80,8 % of the total cif value at the Community frontier of imports of all the product in question, regardless of the Chinese exporter concerned.

F. INJURY

(a) Volume and market share of dumped imports

(23) There was an 8,2 % increase between 1985 and 1988 in the Community's consumption of sacks, which rose from 36 215 tonnes to 39 191 tonnes.

Imports of Chinese sacks stood at 8 094 tonnes in 1985, 14 190 tonnes in 1986, 15 192 tonnes in 1987 and 13 796 tonnes in 1988. The market share of these imports was 22,3 % in 1985, 36,9 % in 1986, 38,6 % in 1987 and 35,2 % in 1988.

The Community industry's sales on the Community market were 9 197 tonnes in 1986, 10 586 tonnes in 1987 and 10 430 tonnes in 1988. The market share of the Community industry showed little growth, rising from 23,9 % in 1986 to 26,9 % in 1987 and 26,6 % in 1988.

(b) Prices

(24) Overall, the Community industry dropped its prices by 6,9 % between 1986 and 1988. Prices dropped by as much as 12,4 % in 1987, subsequently rising by 6,3 % in 1988.

(25) When investigating undercutting, the Commission found that Chinese exporters generally sold sacks to wholesalers in the Community. These importers then resold them to the end-users. Community producers, by contrast, generally sold direct to the end-user. In order to compare the prices of Chinese sacks and those produced in the Community at a similar marketing stage, the Commission compared the ex-factory price of Community sacks with the importers' ex-warehouse price for Chinese sacks.

The Commission took as its base for calculating importers' ex-warehouse price the post-clearance cif price, adjusting it by 21 % to cover the importers' general, administrative and sales expenses. A profit margin of 5 % was also added.

Importers' general, administrative and sales overheads were held to represent the difference between different stages of marketing.

Weighted averages were thereby reached for the selling prices of different types of sack. Comparison of these averages showed that Chinese producers' prices were 22,5 % lower than those of Community producers.

(c) Other economic factors to be considered

(26) The Commission found that the Community industry's production capacity had gone from 14 409 tonnes in 1985 to 14 947 tonnes in 1988. This was paralleled by a drop in output of sacks from 11 455 tonnes to 11 005 tonnes. Capacity use fell therefore from 79,5 % in 1985 to 73,6 % in 1988.

The Community industry's income from sack sales rose by 5,6 % between 1986 and 1988, while the quantity of sacks sold increased by 13,4 % in the same period.

The profitability of Community producers declined considerably between 1985 and 1988. In 1985 the Community industry showed a profit of 9,4 % ; in 1986 profitability was still at 5 %. By contrast, after a market increase in imports of Chinese sacks, losses stood at 10 % in 1987 and were still at about 0,6 % in 1988.

Jobs declined from 1 475 in 1985 to 1 321 in 1988.

It should be borne in mind that three of the 11 firms on whose behalf the complaint was made, reduced or stopped sack production between 1987 and 1988.

(d) **Conclusion**

(27) Although the Community industry's market share has increased slightly, firms' profitability has declined considerably. Chinese sacks have proved cheaper than those produced by the Community industry. The latter has been prevented from raising prices and maintaining financial viability. Although it has chosen to defend its market position by investing in new plant, the Community industry has sustained considerable losses and is therefore suffering major injury.

G. CAUSAL LINK BETWEEN THE INJURY AND DUMPED IMPORTS

(28) The Commission has examined the extent to which dumping has injured the Community industry. The Commission found that limited growth in the Community industry's market share and reduced profit margins coincide with increases in the volume of imports of Chinese sacks. The prices of Community-produced sacks have to a great extent followed those of the Chinese exporters. At least two Community producers have had to stop producing sacks because of the prices charged by Chinese exporters. A third producer has had to cut production and withdraw from most of the Community market for the same reasons.

(29) Because of their large market share, Chinese exports have greatly influenced the price of sacks in the Community. The prices of Chinese sacks have thus become the reference prices on the Community market. Chinese exporters' prices, which are lower than those of the Community industry, have prevented the Community industry from keeping its prices at a suitable level, thereby bringing it into financial difficulties.

(30) Increasing Community consumption between 1985 and 1988 benefited Chinese exporters because of the prices at which they were offering sacks. At the same time Community producers were prevented from increasing their sales proportionately.

(31) Imports of sacks originating in other countries cannot be held to have injured the Community industry. These imports took only 26,9 % of the Community market in 1988, less than the Chinese market share. These imports originated moreover in many different countries, about 30 in all, not one of which held a market share large enough to exercise an influence on the Community market comparable to that of Chinese imports. It is the volume of the latter which enables them, when dumped by exporters, to force down the price of sacks in the Community.

(32) The Chinese exporters and the importers attributed Community producers' difficulties to obsolete plant. This statement proved inaccurate : most of the factories and their plant are perfectly competitive and the Community producers have maintained a considerable level of investment.

(33) The investigation showed that, besides the sacks released for free circulation in the Community, some Chinese sacks had been imported under temporary import arrangements. However, the impact of such imports could not be assessed since so few importers would cooperate. It was nevertheless noted that imports temporarily admitted were by definition intended for re-export. The bulk of the Community industry's sales, 95 % in 1988, is consumed within the Community.

(34) Dumped imports were found to be the only probable cause of injury.

(35) The Commission therefore finds the major injury sustained by the Community industry to have been caused by dumping of sacks by Chinese exporters.

H. COMMUNITY INTEREST

(36) When deciding whether it is in the Community interest to take measures against dumping of Chinese sacks, the Commission's first consideration was the importance of these sacks to the packaging industry. This type of packaging is widely used for transporting, and in particular exporting, the Community's agricultural and industrial production. The woven polyolefin sack promises moreover to develop into a technically more complex and more efficient product than today's sack.

This is why any appreciable reduction in the Commuity industry's output, or even disappearance of Community producers, quite conceivable if the present situation persists, would damage the packaging industry. Furthermore, the woven polyolefin sack's technical development will be impeded or even stopped if manufacturers find themselves vulnerable or in difficulties. Lastly, a Community industry lagging behind such technical development would shed jobs and be commercially weakened.

(37) When assessing Community interest, the Commission also took account of the fact that the sacks belong to textile category No 33, in which imports originating in China are subject to regional quantitative limits. Limits for 1984 to 1988 were set by Council Regulation (EEC) No 2072/84 [1] and those for 1989 to 1992 by Council Regulation (EEC) No 2135/89 [2] in accordance with the Agreement between the European Economic Community and the People's Republic of China on trade in textile products [3]. The Commission considered that neither Community law nor international rules prohibited imposing anti-dumping duties where regional quantitative limits exist, provided that injury can be proven despite these restrictions.

Furthermore, as the agreed minute annexed to the Agreement shows [4], the Community had during negotiations drawn the attention of the Chinese delegation to the particular problems caused in the Community by imports from China of products of this category and had requested the introduction of a Community quantitative limit. The Chinese delegation was unable to accept the introduction of such a quantitative limit.

The parties compromised by continuing as before to apply regional quantitative limits to imports into France, the Benelux countries and the United Kingdom and adding a new regional quantitative limit for Ireland.

However, dumped imports concern all Member States, and Chinese undercutting of sack prices has repercussions throughout the Community market. There is a Community sack market. Prices are not affected by the existence or otherwise of regional quantitative limits in respect of imports into the Member States. These limits apply moreover to the whole of category No 33 and not only sacks.

Regional quantitative limits therefore provide inadequate protection against Chinese exporters' unfair trading practices and are not such that they can redress the injury to the whole Community industry.

(38) It has been suggested that imposing an anti-dumping duty would result in Community importers losing business and some of their employees losing their jobs.

When considering these arguments, the Commission weighed the interests of the importers against the numerous consequences for a viable Community industry were fair competition not restored.

This assessment shows the Community interest to lie in ensuring the survival of sack manufacture, both for the sake of jobs and the Community packaging industry, rather than encouraging Community firms profiting from dumping by Chinese exporters.

(39) The Commission was also aware that the disappearance of the Community industry could pose a threat to the security of supplies of sacks to the end-users and that the price of Chinese exports might, following this line of argument, then rise. Any inconvenience caused by an immediate increase in the price of Chinese sacks owing to the imposition of an anti-dumping duty will be offset by the interest of preserving a viable Community industry. Imposing an anti-dumping duty will therefore permit the injury sustained by the Community industry to be redressed without any really harmful consequences.

(40) Examination of the interests involved has brought the Commission to the conclusion that the Community's reasonable interest requires the Community industry to be protected against the unfair trading practices of Chinese exporters. The Commission therefore deems it necessary to impose a provisional anti-dumping duty on imports of sacks originating in China in order to redress the major injury sustained.

I. DUTY

(41) Redressing the injury sustained by the Community industry requires measures to prevent undercutting and allow the Community industry to restore its profitability and so maintain or increase its market

[1] OJ No L 198, 27. 7. 1984, p. 1.
[2] OJ No L 212, 22. 7. 1989, p. 1.
[3] OJ No L 380, 31. 12. 1988, p. 2.
[4] OJ No L 380, 31. 12. 1988, p. 71.

share. The price of Chinese sacks must therefore be raised.

The Commission has therefore calculated the margin of injury sustained by the Community industry on the dual basis of undercutting by Chinese sacks and a target price for Community sacks. Eliminating the undercutting, which amounts to 22,5 %, did not seem sufficient to fully redress the injury. Since the sacks are equivalent in quality, the price of Chinese sacks must not be lower than that of those produced in the Community if the latter is to retain its customers. The Commission therefore felt that the target price should include a profit margin calculated on a reasonable basis. The Community industry's profitability stood at about 9,4 % in 1985 and the rate of return on capital at 7,5 % before it collapsed in the face of increasing Chinese imports. The Commission considered this to be a reasonable base and therefore set the target profit margin at 9,4 %.

(42) Achieving such a profit and thereby redressing the injury to the Community industry requires a 43,4 % increase in the free-at-Community-frontier price of Chinese sacks. The dumping margin represented by Chinese production imported into the Community exceeds the margin of injury thus established. The amount of the provisional duty imposed must therefore equal the margin of injury established.

(43) Those concerned will have the opportunity to make known their views and request a hearing. It should moreover be remembered that the conclusions drawn for this Regulation are provisional and may be reconsidered in the event of any Commission proposal in respect of imposing a definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty shall be imposed on imports of woven polyolefin (polyethylene or polypropylene) sacks originating in the People's Republic of China and falling within CN code 6305 31 91.

2. The rate of the duty, applicable to the pre-clearance free-at-Community-frontier net price, shall be 43,4 %.

3. Existing provisions in respect of customs duties shall continue to apply.

4. The release for free circulation in the Community of the goods mentioned in paragraph 1 shall be conditional on the deposit of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, parties concerned may make known their point of view in writing and request a hearing from the Commission within one month of the entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*. Subject to the provisions of Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for four months unless the Council adopts definitive measures before the expiry of this period.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 July 1990.

For the Commission

Frans ANDRIESSEN

Vice-President