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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2346/93

of 23 August 1993

amending Regulation (EEC) No 3308/90 by imposing an additional anti-dumping duty on imports of woven polyolefin sacks originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Articles 12 and 13 (11) and 14 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee as provided for under the abovementioned Regulation,

Whereas :

A. Procedure

(1) By Commission Regulation (EEC) No 2051/90 [2], a provisional anti-dumping duty of 43,4 % was imposed on imports on woven polyolefin sacks originating in the People's Republic of China. This duty was confirmed by Council Regulation (EEC) No 3308/90 [3].

(2) The Commission received a complaint lodged by the European Association for Textiles Polyolefin (EATP) on behalf of producers representing a major proportion of Community production of woven polyolefin sacks, alleging that oll or part of the anti-dumping duty had been borne by the exporters concerned.

(3) Since the complaint contained evidence of absorption of anti-dumping duty by the exporters, the Commission announced the initiation of an investigation as provided for in Article 13 (11) of Regulation (EEC) No 2423/88, in a notice published in the *Official Journal of the European Communities* [4].

(4) The Commission officially advised the exporters and importers known to be concerned and gave interested parties the opportunity to make their views known in writing.

(5) Replies to the Commission's questionnaire were received on behalf of nine Chinese exporters. Only two of the replies of the importers to whom questionnaires were sent contained substantive information. These two importers accounted for approximately 36 % of the total imports into the Community of woven polyolefin sacks originating in the People's Republic of China.

(6) None of the interested parties requested the Commission to undertake a full review Regulation (EEC) No 3308/90 pursuant to Article 14 of Regulation (EEC) No 2423/88. Moreover, on the basis of the information available, the Commission did not consider that circumstances had changed sufficiently to justify the need for such a review on the Commission's initiative.

(7) The investigation into absorption of the anti-dumping duty by the exporters covered the original investigation period, 1 January to 31 December 1988, which had been taken into account for calculation of the anti-dumping duty, and the nine-month period following the imposition of the provisional anti-dumping duty and prior to the initiation of the present investigation, i.e. from 1 August 1990 to 30 April 1991.

B. Product

(8) The product under consideration is identical to the product subject to the definitive anti-dumping duty referred to in recital 1, i.e. woven polyolefin sacks (polyethylene or polypropylene) falling within CN code 6305 31 91.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 187, 19. 7. 1990, p. 36.
[3] OJ No L 318, 17. 11. 1990, p. 2.
[4] OJ No C 157, 15. 6. 1991, p. 5.

C. Absorption of the anti-dumping duty by the exporter

I. *Existence of absorption of duty*

(9) The Commission based its findings on the export prices provided by the Chinese exporters who replied to the Commission's questionnaire, and used official customs statistics and information verified at the premises of the cooperating importers to corroborate the information obtained from the Chinese exporters.

(10) The information on prices provided by the Chinese exporters clearly shows that, following the imposition of provisional anti-dumping duties by Regulation (EEC) No 2051/90 on woven polyolefin sacks, the import price at Community frontier (i.e. the cif price before payment of customs and anti-dumping duties) fell considerably.

(11) As a consequence, by reducing their prices for export to the Community after imposition of the anti-dumping duty, the exporters of woven polyolefin sacks originating in the People's Republic of China have absorbed completely or partially the effect of the anti-dumping duty.

II. *Extent of absorption of the duty*

(12) Since the absorption took the form of a lowering of export prices, the extent of absorption of the anti-dumping duty has been calculated on the basis of a comparison of prices of woven polyolefin sacks originating in the People's Republic of China during the period 1 January to 31 December 1988, and prices during the period following imposition of an anti-dumping duty, i.e. from 1 August 1990 to 30 April 1991.

(13) In order to arrive at the level of this absorption, the Commission calculated a price based on the weighted average cif price for the original investigation period together with an amount corresponding to the anti-dumping duty to reach a price at which the product under consideration should have been sold in the Community.

This price was then compared to the cif price, anti-dumping duty paid, for the nine-month period following the imposition of the provisional duty. In establishing these prices, the Commission followed the same methodology and used the same exchange rates as for the calculation of the prices in the original investigation period. On the basis of this comparison, taking into account the reduction in the export price, the level of absorption is 97,6 % when expressed as a percentage of the amount of duty paid on the reduced export price.

D. Others factors

(14) The Chinese exporters claimed that in investigating the allegation of absorption the Commission should take into account the impact of currency fluctuations and changes in raw material prices in China on their export prices to the Community. They argued that any decrease in their export price after the imposition of duty was attributable to those factors.

In addressing this argument, it is recalled that as the People's Republic of China is not a market economy country, normal value had to be based on the normal value of the like product in India. Since the Commission has no convincing evidence at its disposal, nor was any submitted that the normal value established for the Indian producers has altered and in any event not to an extent to influence the conclusions of this investigation, a general review is not warranted nor has any request for such a review been received.

E. Conclusion

(15) On the basis of the above findings, the Council concludes that the exporter has effectively borne a large part of the anti-dumping duty through a corresponding reduction in its export price and that its dumping margin is not lower than the sum of the original duty and the amount borne.

F. Community interest

(16) The purpose of the additional anti-dumping duty provided for in Article 13 (11) of Regulation (EEC) No 2423/88 is to compensate for the amount of the anti-dumping duty borne by the exporter, which effectively increases his dumping margin and nullifies the effect of the original duty.

(17) The Commission has no reason to believe that the findings concerning Community interest expressed in recitals 7 and 8 of Regulation (EEC) No 3308/90 warrant amendment.

(18) Moreover, given that the absorption of an anti-dumping duty by the exporters cancels the effect of the anti-dumping duty and therefore prevents the removal of the injury suffered by the Community industry, and that the imposition of this duty had been considered to be in the Community interest, a measure aimed at restoring the effet of the said duty is therefore in the Community's interest.

(19) No other arguments showing that additional measures would not be in the Community interest have been put forward.

G. Additional anti-dumping duty

(20) In order to compensate for the level of absorpton and to restore the effect of the original duty, an additional duty, equivalent to 97,6 % of the existing duty, i.e. 42,3 % is required to bring the current Chinese export price up to the level envisaged by Regulation (EEC) No 3308/90.

(21) Since the anti-dumping duty currently in force is 43,4 % of the net, free-at-Community frontier price, an additional duty of 42,3 % must be imposed. The total anti-dumping duty imposed on imports of woven polyolefin sacks originating in the People's Republic of China should, therefore, be 85,7 %.

For practical reasons, the imposition of this additional duty takes the form of an amendment to Regulation (EEC) No 3308/90. This does not constitute a modification of the anti-dumping duty within the meaning of Article 15 (1) of Regulation (EEC) No 2423/88 and, therefore, the expiry date of the anti-dumping duty, including the additional duty, remains unchanged,

HAS ADOPTED THIS REGULATION :

Article 1

Article 1 (2) of Regulation (EEC) No 3308/90 is replaced by the following :

'2. The rate of duty, applicable to the net, free-at-Community frontier price, before duty shall be 85,7 %'.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities.*

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

Done at Brussels, 23 August 1993.

For the Council

The President

W. CLAES