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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1950/97

of 6 October 1997

imposing a definitive anti-dumping duty on imports of sacks and bags made of polyethylene or polypropylene originating in India, Indonesia and Thailand and collecting definitively the provisional duty imposed

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], hereinafter referred to as 'the Basic Regulation', and in particular Article 9 thereof,

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

Whereas:

I. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 45/97 [2] (hereinafter referred to as 'the Provisional Duty Regulation') provisional duties were imposed on imports into the Community of sacks and bags falling within CN codes 6305 32 81 and 6305 33 91 and originating in India, Indonesia and Thailand. The provisional anti-dumping duty was extended for a maximum period of three months by Commission Regulation (EC) No 1168/97 [3].

II. SUBSEQUENT PROCEDURE

(2) Following the imposition of provisional anti-dumping measures, several interested parties submitted comments in writing.

(3) The parties who so requested were granted an opportunity to be heard by the Commission.

(4) The Commission continued to seek and verify all the information it deemed necessary for the purpose of its definitive findings.

(5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral written comments submitted by the interested parties were considered and, where deemed appropriate, taken into account in the definitive findings.

III. PRODUCT CONCERNED AND LIKE PRODUCT

(7) Some exporters contested the finding in the Provisional Duty Regulation that leno bags were considered as product concerned. They reiterated the arguments set out in recital 8 of the Provisional Duty Regulation. In this respect it should be noted that the fact that leno bags are not completely interchangeable with all the other types of the product concerned is not required in order to consider them as single product. Rather, it is sufficient that these product types have the same basic physical characteristics and the same basic uses. This is clearly the case for leno bags as compared with other types of polyolefin bags subject to investigation. The provisional conclusions concerning the description of the product concerned are therefore confirmed.

(8) In addition, the allegation made by these exporters that the Community industry did not produce leno bags is unfounded. While it is recalled that it is not necessary for a product type to be produced by the

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 12, 15. 1. 1997, p. 8.
[3] OJ L 169, 27. 6. 1997, p. 14.

Community industry in order to be covered by the scope of an anti-dumping proceeding, the investigation has revealed, nevertheless, that three of the cooperating Community producers also manufacture and sell leno bags. Therefore, the Community industry does produce the like product as defined by Article 1 (4) of the Basic Regulation.

(9) One importer requested that flexible intermediate bulk containers of fabric weighing 120 g/m² or less (so-called big bags) should not be covered by the proceeding. In this respect it was submitted that, until the beginning of 1995, big bags could only be produced by using fabrics weighing 120 g/m² or more. However, in the meantime, technological progress has meant that fabric weighing only 100 g/m² can now be used for the production of big bags. Moreover, the importer in question pointed out that big bags weighing 120 g/m² or less are easily identifiable because they fall under a separate CN code.

(10) This request could not be accepted. First, the complaint covered all bags made of polyethylene or polypropylene strip, not knitted or corcheted, of a fabric weighing 120 g/m² or less. It did not distinguish between big bags and other types of bag. Second, big bags and other types of bag subject to the investigation have the same basic physical/chemical characteristics and the same uses, i.e. they are made of the same raw material and used for packaging and transporting goods. In this respect it should be noted that even if a specific type of the product concerned did not exist or was not widely used during the investigation period, the definition of the product also covers product types which have been developed subsequently provided these types have the same basic physical/chemical/technological characteristics and the same uses.

(11) The Provisional Duty Regulation mentioned, in recital 6 thereof, that the product concerned falls within CN codes 6305 32 81 and 6305 33 91. However, the Commission became aware that the sacks and bags concerned in the present investigation can be classified under CN codes 3923 21 00, 9323 29 10 and 3923 29 90 while still meeting the description of the product concerned if made from a fabric which is either woven from a strip wider than 5 mm or laminated on both sides to an extent visible to the naked eye. Therefore, sacks and bags falling under the description of the product concerned and classified under CN codes other than those provisionaly disclosed should also be covered by the present investigation. Therefore, the conclusions set out in the Provisional Duty Regulation concerning the definition of the product concerned and the like product are confirmed.

IV. DUMPING

1. Normal value

(a) *India*

(12) Three Indian exporting producers have objected to the methodology used to determine whether their sales had been made in the ordinary course of trade. They argued that since the cost of raw materials increased sharply during the period of investigation, the monthly cost of production, rather than the annual cost, should have been used to determine the volume of sales made at a loss. Considering that raw materials constitute the most important element of the total costs of production for the product concerned, the volume of sales below unit cost was recalculated on the basis of the monthly cost of production for the companies which provided such information.

(13) Several Indian exporting producers objected to the way in which Article 2 (4) of the Basic Regulation has been applied by the Commission. They requested that the weighted average sales prices should have been compared with the weighted average costs of the product types concerned without eliminating those sales which were made at a loss. Although some prices were below cost at the time of sale, the average selling price of the product concerned was above the weighted average cost.

It should be noted that it is consistent practices, in accordance with the third paragraph of Article 2 (4) of the Basic Regulation, only to base normal value on all sales, including those made at a loss, if the following two conditions are cumulatively met, i.e.

— the weighted average cost of production is lower than the weighted average selling price for a given product, and

— the domestic sales volume made at a loss is less than 20 % of the total sales volume.

As any other approach would be in conflict with Article 2 (4), the request made by the Indian exporters therefore had to be refused.

(14) One Indian exporting producer which sold the product concerned in insufficient quantities on its domestic market and which exported product types which were sold by other producers/exporters in the country concerned, argued that the calculation of normal value should have been constructed rather than based on the prices charged by other producers in India.

In accordance with Article 2 (1) of the Basic Regulation, normal value is normally based on domestic prices. If an exporter does not make sufficient domestic sales in the ordinary course of trade, normal value must be established on the basis of other exporters' sales prices for the comparable product, because it can be assumed that the use of other exporters' prices produces a more accurate normal value than construction from the cost of production. Only in the absence of representative domestic sales by other producers, or if such sales prices are not suitable, will normal value be constructed in accordance with Article 2 (3) of the Basic Regulation. However, the exporter in question did not advance any argument as to why the use of other exporters' prices should not have been suitable.

(b) *Indonesia*

(15) An Indonesian exporting producer claimed that the weighted average of the normal values established for the other Indonesian producers should not be applied to him since it was not representative for a certain type of bag and suggested that this product type be excluded from the calculation of normal value, or that the normal value be constructed. This claim could not be accepted for the same reasons as set out in recital 10 of the Provisional Duty Regulation.

(c) *Conclusion*

(16) The other findings made in recitals 14 to 24 of the Provisional Duty Regulation concerning the determination of normal value are hereby confirmed.

2. **Export price**

(17) No new arguments have been brought forward concerning the determination of export prices. The findings set out in recital 20 of the Provisional Duty Regulation are therefore confirmed.

3. **Comparison**

(a) *India*

(18) Four Indian exporting producers contested the inclusion of bank charges in the cost of credit for the adjustment of the export prices. They claimed that these charges were not taken into account by them when determining the export prices charged. It should be noted that in these cases the bank charges are intrinsically linked to the cost of credit and as such must therefore be taken into consideration when determining the cost of credit. Therefore, the claim could not be accepted.

(19) A majority of producers/exporters claimed that insufficient allowance had been granted for duty drawback on the grounds that all domestically purchased raw materials bore import duties for which a duty drawback allowance should have been granted and that they would receive duty drawback whenever they exported the product concerned, irrespective of whether the raw materials used originated in the domestic markets of the countries concerned or were imported from third countries.

In this respect it should be noted that the producers/exporters failed to submit conclusive evidence to substantiate the claim that all polyethylene and prolypropylene used for the production of sacks and bags, including those sold domestically, contained imported raw materials for which duties were paid in accordance with Article 2 (10) (b) of the Basic Regulation. Therefore, as was set out in recital 24 of the Provisional Duty Regulation, adjustment for duty drawback has been granted only where it was found that the like product and the materials physically incorporated therein sold by the producers/exporters in question on their domestic markets and intended for consumption within those countries, did bear import charges.

(b) *Indonesia*

(20) The Indonesian exporting producers claimed that an allowance for duty drawback should be granted on the basis of past practice and the fact that the exemption of duties for polyethylene and polypropylene resin used in the production of exported bags is allegedly reflected in the fact that import charges are borne by resin physically incorporated in the bags sold on the domestic market.

The exporting producers failed to submit conclusive evidence to demonstrate that all polyethylene and polypropylene resins used for the production of sacks and bags, including those sold domestically, contained imported raw materials for which duties were paid in accordance with Article 2 (10) (b) of the Basic Regulation. Therefore, the adjustment for duty drawback has not been granted.

(c) *Thailand*

(21) The Thai exporting producers claimed that, in view of the significant price differences between the raw materials originating, on the one hand, on the domestic market and used for domestic sales of the product concerned and, on the other hand, those originating on the export market and used for exports to third countries, an allowance should be granted pursuant to Article 2 (10) (k) of the Basic Regulation. The Thai exporting producers argued that the duty drawback system operated in Thailand resulted in a significant difference between the raw material costs for the exported product and those for the product sold domestically and thus affected price comparability between domestic sales prices and export sales prices.

It should be noted that the adjustment requested is related to duty drawback and import charges and is exhaustively governed by Article 2 (10) (b) of the Basic Regulation. However, the exporting producers failed to submit conclusive evidence to demonstrate that all polyethylene and polypropylene used for the production of sacks and bags, including those sold domestically, contained imported raw materials for which duties were paid in accordance with Article 2 (10) (b) of the Basic Regulation.

4. Dumping margin

(a) *General*

(22) In the absence of any other new arguments concerning the determination of the dumping margin, the methodology set out in recitals 25 to 36 of the Provisional Duty Regulation is hereby confirmed.

(b) *India*

(23) One Indian exporting producer contested the conclusions of recital 27 of the Provisional Duty Regulation, which were that only one dumping margin should be established for two related companies. It was alleged that the company is a distinct economic entity, with separate production, administration and marketing, manufacturing a different product.

However, in view of the facts set out in the Provisional Duty Regulation, most of which were not disputed by the company, and in order to avoid the risk of circumvention of the anti-dumping measures, the decision to establish only one dumping margin for the two Indian producers/exporters in question was maintained.

(24) The weighted average dumping margins definitively established for the cooperating Indian producers/exporters, expressed as a percentage of the free-at-Community-frontier price are as follows:

— Gilt Pack	0,0 %
— Neo Sack Ltd	0,0 %
— Buildmet Private Ltd	15,6 %
— Kanpur Plastipack	4,3 %
— Polyspin Export Ltd and Polyspin Private Ltd	13,8 %
— Shankar Packaging Ltd	6,1 %.

(25) The dumping margin definitively established for Indian exporters other than those cooperating in this investigation, expressed as a percentage of the free-at-Community-frontier price, is 36,0 %.

(26) The Plastics and Linoleums Export Promotion Council in India contested the observation in recital 29 of the Provisional Duty Regulation that there was a high level of non-cooperation. Taking into account the fact that the cooperating exporters accounted for approximately 57 % of total exports, it follows that 43 % of the exporters did not cooperate. In line with consistent practice this is considered a high level of non-cooperation. This request could therefore not be accepted, and the methodology set out in recital 29 of the Provisional Duty Regulation was consequently maintained.

(c) *Indonesia*

(27) The dumping margins found for Indonesian producers/exporters as set out in recitals 31 to 33 of the Provisional Duty Regulation are hereby definitively confirmed. Accordingly the dumping margins expressed as a percentage of the free-at-Community-frontier price are as follows:

(i) for cooperating producers/exporters included in the sample:

— PT Budi Indoplast Indah	56,0 %
— PT Hardo Soloplast	28,4 %
— PT Kemilau Indah Permana Ltd	31,0 %
— PT Poliplas Indah Sejahtera	38,0 %
— PT Simoplas	23,5 %

(ii) for cooperating producers/exporters not included in the sample: 28,3 %

(iii) for Indonesian producers/exporters other than those cooperating in this investigation: 56,0 %.

(d) *Thailand*

(28) One Thai exporting producer objected to the comparison of the weighted average normal value with the export price on a transaction-by-transaction basis, pointing out that there were only a few transactions which differed considerably from the weighted average sales price, and that these few transactions concerned prices that were significantly higher than the weighted average export price. A review of the calculations confirmed this and the weighted average normal value was therefore compared with the weighted average export price. The method of comparison was also reviewed for the other Thai exporters and, since a similar situation was found for two other companies, it was decided to compare the weighted average normal value with the weighted average export price for these companies as well.

(29) The weighted average dumping margins definitively established for the cooperating Thai producers/exporters, expressed as a percentage of the free-at-Community-frontier price are as follows:

— Bangkok Polysack Co. Ltd	13,2 %
— CP Poly-Industry Public Co. Ltd	43,2 %
— Laemthong Industry Co. Ltd	60,8 %
— Pacific Polysack Co. Ltd	47,8 %
— Thai Coating Industrial Public Co. Ltd	21,5 %
— Thai Plastic Products Co. Ltd	15,8 %.

The dumping margin definitively established for Thai exporters other than those cooperating in this investigation, expressed as a percentage of the free-at-Community-frontier price, is 60,8 %.

(e) *New exporters in India*

(30) Three Indian companies which did not export the product concerned to the Community during the investigation period requested to be treated as newcomers. The Commission, after having examined that all the conditions provided for in Article 11 (4) of the Basic Regulation were met, concluded that the weighted average dumping margin found for the cooperating Indian companies, i.e. 10,5 %, should be used for these three newcomer companies.

V. COMMUNITY INDUSTRY

(31) The Plastics and Linoleums Export Promotion Council in India (PLEPCI) questioned the standing of the complainants on the grounds that, from the eight original complainants, only four of them and another one, which joined the complainant later on, responded to the Commission's questionnaire and claimed that the Commission did not provide a basis for its conclusion on the representativeness of the complaining industry as set out in recital 37 of the Provisional Duty Regulation.

(32) This criticism was not supported by any substantiated evidence that the Commission's conclusions in this regard were wrong. As mentioned in recital 37 of the Provisional Duty Regulation, it had been examined in the course of the investigation whether the cooperating complainant Community producers still represented a major proportion of the total Community production of the product concerned within the meaning of Article 4 (1) of the Basic Regulation. This examination has shown that the cooperating producers, listed in recital 4 of the Provisional Duty Regulation, represented around 75 % of the estimated total Community production of the like product. Consequently, the qualification of the complaining industry as the Community industry for the purposes of the present proceeding, as stated in recital 37 of the Provisional Duty Regulation, is confirmed.

VI. INJURY

(33) PLEPCI questioned the fact that no figure for the number of employees dependent on the production of the product concerned was specified in the Provisional Duty Regulation and requested clarification on the decrease in employment of 16,9 % mentioned in recital 51 of that Regulation. In response to this claim, it can simply be noted that the employment figure was established on the basis of replies to the questionnaires from the Community industry. Employment in the Community for the production of the like product fell from 767 in 1992 to 637 during the investigation period, namely by 16,9 %.

(34) In the absence of any other argument concerning the injury suffered by the Community industry, the Council confirms the injury findings and the conclusion that this industry has suffered material injury within the meaning of Article 3 of the Basic Regulation, as stated in recitals 38 to 52 of the Provisional Duty Regulation, in particular in view of the negative trends in production, capacity utilization, market share, prices, profitability, investments and employment during the whole period covered by the injury examination.

VII. CAUSATION OF INJURY

(35) PLEPCI claimed that the Commission had established a decrease of 3,9 % in the weighted average selling price of the Community industry during the period under examination but had failed to explain the role played in this negative price evolution by the decrease in the price of raw materials for the production of the like product, arguing that raw material prices fell by more than one third between 1991 to 1993. In addition, it contended that there is a coincidence between the dramatic fall of raw material prices in 1993 and the losses incurred by the Community industry during that year.

(36) During the course of the investigation, the available information did not show that the alleged evolution in prices of the raw materials played a significant role in the trend in selling prices in the Community market between 1992 and the first quarter of 1995, namely for the whole period under examination. As PLEPCI did not provide convincing evidence or information which would demonstrate otherwise, this claim cannot be taken into further consideration.

(37) Furthermore, it should be noted that, contrary to the statement made by PLEPCI, any decrease in the cost of raw material should have had, somehow or other, a positive impact on the profitability of the Community industry, considering in particular the fact that raw materials can represent up to one third of the total Community industry cost of production of the product concerned. The findings reported in recital 49 of the Provisional Duty Regulation, however, demonstrate that this was not the case.

(38) PLEPCI also requested clarification on the findings of the Commission as regards stocks, sales and production of the complainant producers between 1994 and the investigation period, contending that it was inconsistent to state that the volume of sales and production by the Community industry had increased while stocks decreased during the same period.

As regards this argument, it is confirmed that stocks decreased slightly between 1994 and the investigation period. This is explained by the fact that sales made by this industry in the Community market were by and large stable (−46 tonnes), whereas sales intended for export outside the Community increased accordingly during the same period of time.

(39) Finally, PLEPCI argued that the imports under investigation could not be considered to have caused any material injury suffered by the Community industry because between 1994 and the investigation period the prices and market share of the Community producers had increased, whereas the importers under investigation were found to have lost a share of the market due to a slight increase in their import price.

(40) In this respect, it has to be pointed out that the examination of injury covered the period from 1 January 1992 to 31 March 1995, namely a period of over three years. Therefore, any particular trend within a part of this period should be seen in the light of the global trend during the whole period under examination. As the conclusions of PLEPCI are based only on a limited period within the injury examination period, regardless of the global trend during the whole period concerned, its argument has only a limited value.

(41) It is confirmed that the Community industry market share increased by 0,2 % and that prices increased slightly during the investigation period compared with 1994. Nevertheless, the Community industry lost market share and its sales prices decreased during the period considered for the examination of injury, i.e. 1992 to the end of the investigation period as stated in recitals 47 and 48 of the Provisional Duty Regulation. Furthermore, although the imports in question lost 1,8 % of the market share while their prices increased by 2,5 % in the investigation period compared with 1994, it should be recalled that from 1992 to the investigation period, namely the whole period under examination for the assessment of injury, their market share gained 13,8 percentage points or increased by 46 % and their import price decreased by 3,3 %. Their argument, therefore, could not be accepted.

(42) As no new material arguments were received in connection with the findings in recitals 53 to 72 of the Provisional Regulation, the provisional conclusion on the causation of material injury to the Community industry is confirmed.

VIII. COMMUNITY INTEREST

(43) It should be recalled from recital 73, *et seq.*, of the Provisional Duty Regulation that an appreciation of the various interests, including the interests of the Community industry, users and importers, was made, and that there were no compelling reasons against the introduction of anti-dumping measures. Rather it was concluded that the Community's reasonable interests require that the Community industry be protected against the unfair trading practices of dumped imports originating in India, Indonesia and Thailand.

(44) As no new arguments were received in connection with the Community interest analysis made in the Provisional Duty Regulation, the provisional findings are hereby confirmed.

IX. ANTI-DUMPING MEASURES

(45) Based on the above conclusions on dumping, injury, causal link and Community interest, it was considered what form and level of anti-dumping measures would have to be taken in order to remove the trade-distorting effects of injurious dumping and to restore effective competitive conditions to the Community market.

(46) Since the level of prices at which the injurious effects of the imports would be removed was higher than the dumping margin of all the countries concerned in the investigation, the dumping margin was used in order to determine the level of the measures.

(47) On the above basis, definitive duties, in the form of *ad valorem* duties, should be imposed.

(48) Pursuant to Article 11 (4) of the Basic Regulation, a new exporter's review to determine individual dumping margins cannot be initiated in this proceeding with regard to Indonesia, as sampling was used in the original investigation. However, in order to ensure equal treatment between any new exporters and the companies cooperating in this investigation, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11 (4).

X. COLLECTION OF THE PROVISIONAL DUTIES

(49) In view of the magnitude of the dumping margins found for the exporting producers and in the light of the seriousness of injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duties for transactions involving the product concerned should be definitively collected at the level of the definitive duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of 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, Indonesia and Thailand. The product as described falls within CN codes 6305 32 81, 6305 33 91, ex 3923 21 00 (Taric code: 3923 21 00*10), ex 3923 29 10 (Taric code: 3923 29 10*10) and ex 3923 29 90 (Taric code: 3923 29 90*10).

2. For the purpose of this Regulation, the rate of duty applicable to the net free-at-Community-frontier price before duty shall be as follows:

(a) 36,0 % for sacks and bags originating in India (Taric additional code 8900) with the exception of imports manufactured by the following companies, which shall be subject to the following rates of duty:

India:

	Rate of duty (%)	*Taric additional code*
Buildmet Private Ltd	15,6	8944
Gilt Pack	0,0	8945
Kanpur Plastipack	4,3	8946
Neo Sack Ltd	0,0	8947
Polyspin Export Ltd and Polyspin Private Ltd	13,8	8948
Shankar Packaging Ltd	6,1	8949
Aditya Bags (India) Limited	10,5	8424
TPI India Limited	10,5	8424
Virgo Polymers (India) Limited	10,5	8424;

(b) 56,0 % for sacks and bags originating in Indonesia (Taric additional code 8900) with the exception of imports manufactured by the following companies, which shall be subject to the following rates of duty:

Indonesia:

	Rate of duty (%)	*Taric additional code*
P.T. Adhi Kara Suryatama	28,3	8950
P.T. Aster Dharma Industri	28,3	8950
P.T. Hardo Soloplast	28,4	8951
P.T. Kemilau Indah Permana Ltd	31,0	8952
P.T. Peiasnal	28,3	8950
P.T. Poliplas Indah Sejahtera	38,0	8953
P.T. Simoplas	23,5	8954
P.T. Wirapetro	28,3	8950;

(c) 60,8 % for sacks and bags originating in Thailand (Taric additional code 8900) with the exception of imports manufactured by the following companies, which shall be subject to the following rates of duty:

Thailand:

	Rate of duty (%)	*Taric additional code*
Bangkok Polysack Co. Ltd	13,2	8955
CP Poly-Industry Public Co. Ltd	43,2	8956
Thai Coating Industrial Public Co. Ltd	21,5	8958
Thai Plastic Products Co. Ltd	15,8	8959
Pacific Polysack Co. Ltd	47,8	8994.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. Where any Indonesian party provides sufficient evidence to the Commission that it did not export the goods described in Article 1 (1) during the investigation period, that it is not related to any exporter or producer subject to the measures imposed by this Regulation and that it has exported the goods concerned after the investigation period, or that it has entered into an irrevocable contractual obligation to export a significant quantity to the Community, the Council, acting by simple majority on a proposal submitted by the Commission, after consulting the Advisory Committee, may amend Article 1 (2) (b) by attributing to that party the duty applicable to cooperating producers/exporters not in the sample, i.e. 28,3 %.

Article 2

The amount secured by way of provisional anti-dumping duty under the Provisional Duty Regulation shall be definitively collected at the duty rate definitively imposed.

Amounts secured in excess of the definitive rate of anti-dumping duty and related to imports of sacks and bags shall be released.

Article 3

This Regulation shall enter into force on the day following 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 Luxembourg, 6 October 1997.

For the Council

The President

J. POOS