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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2003/97

of 13 October 1997

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

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 Articles 9, 11 and 23 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

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

By Regulation (EEC) No 2346/93 [3], the Council amended Regulation (EEC) No 3308/90 and imposed an increased duty of 85,7 % following a finding that the duty had been borne by the exporters concerned.

2. Request for a review

(2) Following the publication in April 1995 of a notice [4] of the impending expiry of the measures in force, the Commission received a request for a review lodged by the European Association for Textile Polyolefins (EATP) on behalf of eight Community producers allegedly representing a major proportion of the total production of the product concerned in the European Community. The request contained evidence of dumping of the product originating in China, and of renewed material injury likely to result in the event of expiry of the existing measures. This evidence was considered sufficient to justify the opening of a review investigation.

(3) On 17 October 1995, the Commission announced by a notice published in the *Official Journal of the European Communities* [5] (hereinafter referred to as the 'Notice of Initiation') the initiation of a review of Regulation (EEC) No 3308/90 and commenced an investigation pursuant to Articles 11 (2) and 11 (3) of Council Regulation (EC) No 3283/94 [6] which was replaced during the investigation by the Basic Regulation.

3. Investigation

(4) The Commission officially advised the exporting producers and importers known to be concerned as well as their associations, the representatives of the exporting country and the complainant Community producers of the initiation of the review.

(5) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initation.

A number of importers and one organization representing such importers made their views known in writing. The Commission sent questionnaires to all parties known to be concerned and received replies from four Community producers and two importers to the Community.

(6) The investigation was hampered by the fact that no Chinese exporters replied to the Commission's questionnaire or made their views known in writing.

[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 318, 17. 11. 1990, p. 2. Regulation as amended by Regulation (EEC) No 2346/93 (OJ L 215, 25. 8. 1993, p. 1).
[3] OJ L 215, 25. 8. 1993, p. 1.
[4] OJ C 95, 19. 4. 1995, p. 7.
[5] OJ C 271, 17. 10. 1995, p. 3.
[6] OJ L 349, 31. 12. 1994, p. 1.

(7) The Commission sought and verified all information it deemed necessary for the purposes of a determination of dumping and injury and carried out investigations at the premises of the following companies:

(a) *complainant Community producers*

— Condepols SA, Valencia (Spain),

— Cotesi, Carvalhos (Portugal),

— Saint Frères Emballage SA, Paris (France),

— Thrace Plastics Co., Athens (Greece);

(b) *producer/exporter in the analogue country*

— Debant Plastik, Istanbul, Turkey;

(c) *importers*

— Blockx, Arendonk, Belgium,

— Interjute, Hulst, Netherlands.

(8) The investigation of dumping covered the period from 1 January to 30 September 1995 (hereinafter referred to as 'the investigation period'). The examination of injury covered the period from 1 January 1992 to 30 September 1995.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product under consideration is woven sacks and bags of a kind used for packaging of goods not knitted or crocheted, obtained from a polyethylene or polyproplyene strip or the like of woven fabrics weighing 120 g/m^2 or less. There are many different types of sacks and bags manufactured from either raw material, but they all have similar physical, chemical and technical characteristics. The sacks and bags are used for packaging, *inter alia,* industrial and agricultural products.

Since the basic characteristics of the sacks and bags, whether physcial, chemical or technical, and their use, are similar, it was considered that this review should cover all such sacks and bags. In particular, it was considered that sacks and bags from a fabric woven from strips of any width, and from fabric laminated to any extent, should be covered by the scope of the investigation.

(10) The product as described above normally falls now within CN codes 6305 32 81 and 6305 33 91 in accordance with Commission Regulation (EC) No 2448/95 of 10 October 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [1]. The proceeding was opened for products falling within CN code 6305 31 91, which the Regulation in question subsequently replaced with the two CN codes given. In the framework of the current review, however, the Commission became aware that the sacks and bags concerned can, 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, be classified under CN codes 3923 21 00, 3923 29 10 or 3923 29 90 while still meeting the product description given above.

2. Like product

(11) The investigation showed that sacks and bags exported to the Community by Chinese companies constituted a like product to those produced in Turkey, which was eventually chosen as an analogue country in view of China being considered a non market economy country (see recitals 14 and 15). Similarly, the sacks and bags manufactured by the Community industry and sold on the Community market and those exported to the Community from China were alike in all respects as regards their physcial, chemical and technical charateristics. It was found that the printing and hemming of certain bags referred to in recital 36 did not render them different from any other bags. It was also established that the sacks and bags had the same end-uses and competed with each other.

(12) It was therefore concluded that, within the meaning of Article 1 (4) of the basic Regulation, the sacks and bags produced and sold in Turkey constituted a like product to those exported from China to the Community and to those produced and sold by the Community industry.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(13) The aim of the dumping investigation was to consider whether or not it could be determined that expiry of measures would be likely to lead to a continuation or recurrence of dumping, in particular by examining whether dumping continued to take place.

2. Analogue country

(14) As the People's Republic of China is considered a non market economy country, the Commission announced at the initation of the review that Turkey was envisaged as an appropriate market economy third country (hereinafter referred to as the 'analogue country') for the purpose of establishing normal value, in accordance with Article 2 (7) of the Basic Regulation.

[1] OJ L 259, 30. 10. 1995, p. 1.

(15) All interested parties were given the opportunity to comment on the choice of analogue country. The Chinese exporters did not submit any comments concerning this choice. One importer and one European traders' association objected it on the grounds that the Chinese and the Turkish macro-economic situations were not comparable and that Turkish capacity was not sufficient. The importer proposed Indonesia as an alternative analogue country. This proposal was rejected as it was established in an anti-dumping proceeding concerning the same product originating *inter alia* in Indonesia that the latter market was not governed by normal market forces. In these circumstances, and given the fact that the Turkish and Chinese producers use the same machines and the same raw materials, that several producers manufacturing the like product in representative quantities compete on the Turkish market and that Turkish capacity is currently sufficient, Turkey was found to be an appropriate choice of analogue country. The Commission received cooperation from one Turkish producer of the like product.

3. Normal value

(16) As explained in recital 15, the Commission sought and verified from one producer in the analogue country all the information it deemed necessary for the determination of normal value.

(17) As far as this determination is concerned, the Commission set out to establish whether or not the cooperating producer's domestic sales in the analogue country were representative in accordance with Article 2 (2) of the Basic Regulation.

The investigation established that the total domestic sales of the cooperating Turkish producer represented by volume less than 5 % of the Chinese exports of the like product to the Community.

(18) As the volume of domestic sales of the like product was not representative and as there were no other domestic sales by a cooperating producer, normal value was constructed. In accordance with Article 2 (3) of the Basic Regulation, the constructed normal value was based on the cooperating Turkish producer's average costs of production per type of bag. In accordance with Article 2 (6) of the Basic Regulation, a reasonable amount for selling, general and administrative costs and for profits was added to these costs. The former was established on the basis of actual data pertaining to the production and domestic sales of the like product made by the cooperating Turkish producer. With regard to the profit margin, given the high proportion of sales at a loss of the product concerned made by the cooperating producer, the profit margin was based, in accordance with Article 2 (6) (c) of the Basic Regulation, on the information obtained from other Turkish producers on the profit normally realized on sales of the like product in Turkey.

(19) For the purpose of the investigation, the product was classified by type (simple lined and laminated). The different costs of production were calculated separately for the three different types of bags (simple, lined and laminated).

4. Export price

(20) The exporter's questionnaire was sent to 10 alleged producers in China but none of them replied.

(21) Chinese exports of the product concerned were made to independent importers in the Community. The Commission obtained cooperation from two of the importers of the like products. It was considered that the prices reported by these importers were the best evidence available for the purpose of establishing the export price because the volume of these transactions represented a substantial proportion of the imports of the product from China and allowed a calculation per type of bag.

(22) The export prices were therefore determined on the basis of prices actually paid by the two importers for the product concerned during the investigation period. These transactions concerned two types of the product concerned, i. e. simple and lined bags, which were considered representative of Chinese exports. This was because the transaction concerned formed a large proportion of the Chinese exports to the Community, since the cooperating importers represent themselves a very large proportion of all Chinese imports of the like products.

5. Comparison

(23) In accordance with Article 2 (10) and (11) of the Basic Regulation, the constructed normal value by the product type was compared to the weighted average export price by product type on a free-on-board basis and at the same level of trade. To calculate the constructed normal value free on board Turkish port, the inland freight cost to the closest port was added to the constructed normal value established above in order to make a fair comparison with the Chinese export price which was reported FOB Shanghai.

(24) As set out above, the Chinese export prices obtained from the two cooperating importers for the period of investigation concerned only simple and lined bags. The Commission therefore limited its comparison to these two types.

6. Dumping margin

(25) The comparison of the normal value with the export price showed the existence of dumping, the dumping margin being equal to the amount by which the normal value exceeded the price for export to the Community.

(26) The weighed average dumping margin expressed as a percentage of the free-at-Community frontier price, duty unpaid, is 102,4 %.

D. COMMUNITY INDUSTRY

(27) The Commission considered whether the Community producers which supported the request for a review and cooperated with the investigation represented a major proportion of total Community production as provided for in Article 4 (1) of the basic Regulation. In this respect it was found that the four producers who cooperated with the review manufactured a major share (at least 65 %) of the Community's total output. It was therefore concluded that the four cooperating producers could be considered to constitute the 'Community industry' for the purposes of the investigation.

E. LIKELIHOOD OF RECURRENCE OR CONTINUATION OF INJURY

1. Preliminary remarks

(28) The aims of the injury investigation were to consider whether or not it could be determined that expiry of measures would be likely to lead to a continuation or recurrence of injury, in accordance with Article 11 (2) of the Basic Regulation, and whether the measures were either no longer necessary or were no longer sufficient to counteract the dumping which is causing injury, in accordance with Article 11 (3).

2. Community consumption

(29) Apparent Community consumption on the market for free circulation (based on questionnaire replies, Eurostat data and market information available to the Commission) increased from about 33 000 tonnes in 1992 to about 44 000 tonnes in 1995, an increase of about 33 %.

(30) It should be noted that sacks and bags are imported under different import procedures. Anti-dumping and conventional duties are applicable only to imports for free circulation.

3. Volume and market share of the dumped imports

(31) The quantities of the product concerned imported from China for free circulation decreased from 3 884 tonnes in 1992 to 2 672 tonnes in 1995. The market share of these imports (calculated on the basis of the apparent consumption figures in recital 29) fell from 11,7 % in 1992 to 6,1 % in 1995.

(32) It can be noted that while the volumes of Chinese imports for free circulation have fallen in recent years, they retain a significant market share. It can be considered that their ability to undercut Community producers on the free circulation market, even with the current measures in place (see recital 37), has contributed to downward pressure on prices on the Community market.

4. Prices of the dumped imports

(33) The lack of cooperation from the Chinese exporters meant that the export price for the undercutting calculation was taken from the actual transactions (almost entirely for temporary import) of the two cooperating importers. These figures constituted the best information available, in particular since they allowed a price comparison by type of sack or bag (simple, lined, laminated etc.).

(34) The Commission services compared average prices by type of sack or bag on the basis of sales to the first independent importer, in the case of the imports, and to the first independent customer, in the case of the Community producers.

(35) Community producers sell almost entirely direct to end-users. In the small number of cases where they sold to distributors, no appreciable price difference was observed. The import transactions, on the other hand, were all to wholesale importers with associated warehousing costs. In order to take account of this, the Commission adjusted the average Community producers' prices downwards by an appropriate adjustment for the differences in the level of trade.

(36) All the import transactions observed were either: (a) of simple sacks and bags, or (b) of sacks and bags lined with a polyethylene liner. All the lined sacks and bags and all but one transaction of simple sacks and bags were hemmed at the top of the sack or bag and most were unprinted (printing being undertaken by the importer). By contrast, most sales by Community producers were of printed,

unhemmed sacks or bags. The selling prices of Community producers were therefore adjusted, where appropriate, by the deduction of printing costs and the costs of adding a hem. The Commission then calculated an average Community producers' price for each type of sack or bag imported, weighted by sales by the four cooperating producers of the type in question.

(37) Once these adjusted average prices per type of sack or bag were arrived at, calculation was carried out in order to establish the level of actual undercutting, with the current measures in force, on the market in sacks and bags for free circulation. The import prices were increased by 92,9 % (7,2 % conventional plus 85,7 % anti-dumping duty) and compared with the adjusted Community producers' prices. It should be noted that the import transactions were for temporary import and would not therefore have incurred duty, but in the absence of verified transactions intended for free circulation this was the best information available. The result was undercutting margins of 4,7 % for simple hemmed sacks and bags and 28,6 % for lined hemmed sacks and bags, with an average of 15,3 % (expressed as percentages of the adjusted Community producers' prices).

5. Factors relating to the Community industry

(38) In the following recitals, concerning the change in certain key factors between 1992 and the investigation period, figures for the investigation period have been adjusted to make them comparable with full year figures, since the period was of nine months only.

Production

(39) Production by the Community industry fell from 9 500 tonnes in 1992 to a comparable figure of 8 900 tonnes in the investigation period, a fall of 6 %.

Sales volume and market share

(40) The Community industry's sales by volume on the Community market fell by 13 %, from approximately 9 600 tonnes in 1992, to a comparable figure of approximately 8 400 tonnes in the investigation period. This represented a fall in market share from 30,2 % in 1992 to 19,1 % in the investigation period.

Sales value

(41) The Community industry's sales by value on the Community markets fell by 9 %, from approximately ECU 23,7 million in 1992 to a comparable figure of approximately ECU 21,6 million in the investigation period.

Profitability

(42) Profitability of the Community industry for the product concerned declined, with losses increasing from 0,14 % of sales in 1992 to 1,80 % in the investigation period.

Conclusion

(43) These findings confirm that the Community industry is in a weakened state. This would be exacerbated in the event of undercutting on the scale which would arise should the measures against imports from China expire.

6. Price undercutting in the event of expiry of measures

(44) A second undercutting calculation was undertaken to establish the threatened level of undercutting in the event of expiry of measures. The methodology was the same as for that described in recitals 34 to 37, except that to the import prices was added only the 7,2 % conventional duty and not the current anti-dumping duty of 85,7 %. In this case, undercutting margins resulted of 47,0 % for simple hemmed sacks and bags, 60,2 % for lined hemmed sacks and 52,9 % on average, expressed as percentages of the adjusted Community producers' prices.

7. Conclusion

(45) Although imports from China for free circulation have declined, they remain significant compared to production by the Community industry. In this economic sector it can be assumed that the Chinese exporters would have little or no difficulty in increasing their exports back to previous levels if the economic conditions favoured this.

(46) Even with the current measures in place, imports from China are able to undercut Community producers on the 'free circulation' market for sacks and bags. Were measures to expire, the level of this undercutting would be dramatically increased, providing Chinese producers with a strong incentive to increase their exports to the Community and creating further downward pressure on Community producers' prices.

(47) The sacks and bags concerned are subject to a quantitative limit (textiles category 33). However, the limit currently provides no significant constraint on imports (30 % utilization in 1995), in particular since the condition that it should apply even to sacks and bags intended for re-export outside the Community does not apear to be being rigidly applied.

(48) It is therefore concluded that expiry of the measures would be likely to lead to a recurrence of injury.

(49) A further exercise, in accordance with Article 11 (3) of the Basic Regulation, was therefore carried out to determine whether the current measures were sufficient to counteract the dumping which is causing injury. This is covered in recitals 62 to 64.

F. COMMUNITY INTEREST

1. Introduction

(50) No interested parties came forward in the course of the review other than producers and importers (see recital 5). In particular, no users of sacks and bags came forward, which can be taken as a sign that the effect of the measures on their interests was limited. Nevertheless, an assessment, as set out below, was conducted of the wider Community interests involved.

2. Price and quantity effects of measures

(51) Since imposition of measures in 1990, imports of sacks and bags for free circulation from China have fallen. In that time, apparent Community consumption has increased, so it can be assumed that purchasers have used other sources of supply rather than bought fewer sacks and bags. It can be concluded, in the absence of any representation or indication to the contrary, that the measures have not resulted in a shortage of supply.

(52) The price before duty of imports from China fell until 1994 but recovered in 1995. Assessment on the basis of Eurostat statistics suggests that duty paid, imports for free circulation from China were some 70 % more expensive in 1995 than in 1990 before the imposition of measures.

(53) Even at the proposed new rates of duty, Chinese prices will undercut Community producers' prices, since the new rate of duty is below the level of undercutting which would occur in the event of expiry of measures. Community demand is apparently increasing. It can be considered unlikely, even after the imposition of the proposed new measures, that the Chinese exporters will reduce their duty-free price or will be obliged to reduce their sales volumes on the market for free circulation by comparison with the current situation. It can reasonably be assumed that the price of Chinese imports on the market for free circulation (after duties are paid) will rise marginally (less than 10 %) as a result of the proposed new measures.

3. Interests of the Community industry

(54) Turnover of the cooperating Community companies is currently of the order of ECU 23 million and employment of 650 people (scaled up to all Community producers, estimates of ECU 35 million and 1 200 employees).

(55) The investigation has shown that the Community industry has made efforts to rationalize and to switch to production of more specialized types of sacks and bags (such as flexible intermediate bulk containers), indicating that the industry can remain viable. The significant investments made in order to achieve this rationalization would be wasted if the industry concerned is not protected against unfair and injurious imports. Continuation of anti-dumping measures would serve to put the Community industry on a level playing field with imports from China by counteracting unfair competitive practices.

4. Interests of users

(56) The sacks and bags concerned are an industrial product whose main use is to package, *inter alia*, agricultural and chemical products.

(57) By definition, the competitiveness in third-country markets of users in the Community of the sacks and bags (such as agricultural exporters) should not be affected by measures, since sacks and bags for re-export after filling will not be subject to the duty. Measures could, however, affect the competitiveness of users on the Community market *vis-à-vis* third-country competitors. However, for the reasons given below this effect is considered to be minimal.

(58) In order to assess the likely impact on users (in the absence of any submissions or complaints by them in the course of the investigation), the likely cost increases as a result of measures were expressed as proportions of the value of the likely contents of a sack or bag (agricultural commodities etc.), in order to estimate the percentage increase in costs. This

analysis showed that the cost increase for the large majority of users of Chinese sacks would be of the order of 0,5 % of this value. Since the price of the contents is only a part of users' total costs, the cost increase expressed as a proportion of total costs would be lower still.

5. Interests of importers

(59) Only two importers cooperated with the investigation out of more than 40 contacted by the Commission, and submissions were received from one association of importers.

(60) It should be noted that the proposed amended measures are not expected to reduce quantities of Chinese imports. Furthermore, importers are able to switch to other sources of supply and are in any case largely involved in handling temporary imports which will be unaffected by the new measures. In the circumstances, the impact of the proposed limited duty increase on importers is not expected to be substantial.

6. Conclusion

(61) The Commission weighed up all the factors outlined above and considered that there were no compelling reasons not to maintain measures in force, amended according to the outcome of the review, in order to restore a competitive regime of fair pricing and to remove the threat of injury to the Community industry which would result if measures were allowed to expire.

G. ANTI-DUMPING MEASURES

1. Injury elimination level

(62) In the course of the injury investigation it became clear that the mix of type of sacks and bags imported was different from that produced by the Community producers. No laminated sacks or bags, for example, were observed among the Chinese imports, whereas they represent an important part of the production of most Community producers. It was found that simple sacks and bags (the most imported kind) were much less profitable for Community producers than other types.

(63) A calculation was therefore made on the basis of costs of production per type of sack or bag. In the case of some producers, these costs had to be constructed, either because the company's standard costings by type were found not to be in line with their verified total costs or because no such standard costings existed.

(64) To the costs thus arrived at, an adjustment was made to take account of differences in the level of trade between the imports and the sales of Community producers (as in recital 35) and a profit margin was added. Comparison was made by type with the cif prices of the observed imports, adjusted for the 7,2 % conventional duty. The weighted average margin thus arrived at, expressed as proportion of the cif value of the imports and representing the threat of underselling in the event of expiry of measures, and therefore the level of duty required to eliminate injury, was 120,9 %.

It was therefore determined that the current measures of 85,7 % were not sufficient to counteract the dumping which is causing injury.

2. Definitive duties

(65) Since the result of the comparison shows higher injury margins than the dumping margin established, and since the new dumping margin was higher than the level of the duty subject to review, the duty should be based on the dumping margin found in accordance with Article 9 (4) of the Basic Regulation. On the basis of the above, the level of anti-dumping duty should be set at 102,4 %,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of woven sacks and bags of a kind used for 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 the People's Republic of China, falling within the following CN codes:

CN code	Taric code
6305 32 81	—
6305 33 91	—
ex 3923 21 00	3923 21 00*10
ex 3923 29 10	3923 29 10*10
ex 3923 29 90	3923 29 90*10

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be 102,4 %.

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

Article 2

Regulation (EEC) No 3308/90 is hereby repealed.

Article 3

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

It shall expire five years after its entry into force, save that should any review of the measures adopted by this Regulation be pending on that date, it shall remain in force until that review is concluded.

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

Done at Luxembourg, 13 October 1997.

For the Council

The President

J.-C. JUNCKER