COMMISSION REGULATION (EC) No 45/97

of 10 January 1997

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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], as amended by Regulation (EC) No 2331/96 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In April 1995, the Commission announced by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports of sacks and bags made of polyethylene or polypropylene originating in India, Indonesia and Thailand, and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the European Association for Textile Polyolefins (EATP) (hereinafter referred to as 'the complainant') on behalf of eight Community producers allegedly representing a major proportion of the total production of the product concerned in the European Community.

The complaint contained evidence of dumping of the product originating in the countries indicated above, and of material injury resulting therefrom; this evidence was considered sufficient to justify the opening of a proceeding.

(3) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and the complainants. Parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

A number of producers and exporters in the countries concerned as well as importers made their views known in writing. The European Association for the Trade in Jute, Zakkencentrale BV and the Thai Plastic Industries Association requested and were granted a hearing.

The Commission sent questionnaires to the parties known to be concerned and received replies to its questionnaires from five complainant Community producers, seven Indian producers, nine Indonesian producers, six Thai producers and from three importers in the Community.

(4) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination 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),
— Sintéticas del Sur SA, Ubeda (Spain),
— Thrace Plastics Co. SA, Athens (Greece);

(b) *Indian producers*

— Buildmet Private Ltd, Bangalore,
— Gilt Pack, Indore,
— Kanpur Plastipack, Kanpur,
— Neo Sack Ltd, Indore,
— Polyspin Export Ltd, Rajapalayam,
— Polyspin Private Ltd, Rajapalayam,
— Shankar Packaging Ltd, Bombay;

(c) *Indonesian producers*

— PT Budi Indoplast Indah, Jakarta,
— PT Hardo Soloplast, Solo,
— PT Kemilau Indah Permana Ltd, Solo,
— PT Poliplas Indah Sejahtera, Semarang,
— PT Simoplas, Semarang;

(d) *Thai producers*

— Bangkok Polysack Co. Ltd, Bangkok,
— CP Poly-Industry Public Co. Ltd, Bangkok,
— Laemthong Industry Co. Ltd, Bangkok,
— Pacific Polysack Co. Ltd, Bangkok,
— Thai Coating Industrial Public Co. Ltd, Bangkok,
— Thai Plastic Products Co. Ltd, Bangkok.

(5) The investigation of dumping covered the period 1 April 1994 to 31 March 1995 (hereinafter referred to as 'the investigation period').

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 317, 6. 12. 1996, p. 1.
[3] OJ No C 92, 13. 4. 1995, p. 3.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Description of the product

(6) 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 polypropylene strip or the like of woven fabrics weighing 120 gr/m² or less. The product as described above falls within CN codes 6305 32 81 and 6305 33 91 (1).

(7) 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 physical, chemical or technical, and their use, are similar, it was considered that this Regulation should cover all sacks and bags falling within CN codes 6305 32 81 and 6305 33 91.

(8) It has been argued that a specific type of sack and bag called 'leno bags' should be excluded from the scope of the proceeding on the grounds:

— that their physical characteristics, namely a looser weave, prevented them from being used to package those goods mentioned in the complaint, and

— that they are, on a kilo basis, more expensive than the other types of sacks and bags covered by the proceeding.

(9) With regard to the first argument raised, it was found that they could indeed only be used for packaging and transporting goods of a somewhat bigger size such as vegetables, bulbs, etc. Nevertheless, it should be noted that leno bags serve the same use as other types of bag, namely the packaging and transportation of goods. In this respect it should be pointed out that the list of products mentioned in the complaint which could be packaged and transported in the sacks and bags concerned by the proceeding was by no means exhaustive.

(10) With regard to the second argument raised, it should be noted that the price per kilo of leno bags is indeed higher than the price charged for other types of bag. This does not, however, mean that packaging goods in leno bags is more expensive than using other types of bags. On the contrary, prices of leno bags are, on a per-piece basis, significantly lower than prices for other types of sacks and bags. Leno bags therefore constitute a viable alternative for packaging goods to the other types of the product concerned.

Moreover, leno bags were made by using essentially the same raw materials as the other types of sack and bag and have the same physical characteristics.

(11) In the light of the above it was concluded that leno bags are interchangeable with the other types of bag and sack concerned by the proceeding and that they are covered by the scope of the investigation.

2. Like product

(12) The investigation showed that the characteristics of sacks and bags concerned sold on the domestic markets in India, Indonesia and Thailand are alike to those exported from those countries to the Community. Similarly, the types of sack and bag manufactured in the Community and those exported to the Community from the above mentioned countries have the same physical, technical and chemical characteristics and uses, and compete with each other.

(13) It was therefore concluded that the sacks and bags produced and sold in the three countries concerned are, within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation'), alike to those exported from those countries to the Community. The same is true with regard to the products originating in the three countries concerned, as compared to those produced and sold by the Community industry.

C. DUMPING

I. Normal value

1. India

(14) Five Indian companies were found to have representative total domestic sales volumes pursuant to Article 2 (2) and (4) of the Basic Regulation, that is to say that total domestic sales of the product concerned constituted 5 % or more of the sales volume exported to the Community. Normal value was therefore based on either the weighted average prices of those domestic sales which were made in the ordinary course of trade, or, where the domestic sales of a particular product type were not representative in as much as they did not reach the 5 % threshold, on the weighted average of the ex works prices charged by other producers in the country concerned for representative domestic sales of the corresponding product type made in the ordinary course of trade in accordance with the second subparagraph of Article 2 (1) of the Basic Regulation.

(1) The proceeding was opened for products falling within CN code 6305 31 91. Subsequently, the CN code for the product in question was changed by 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 (OJ L 259, 30. 10. 1995, p. 1). The product for which the proceeding has been opened is now covered by CN codes 6305 32 81 and 6305 33 91.

The question whether or not domestic sales were made in the ordinary course of trade was determined in accordance with Article 2 (4) of the Basic Regulation. Where, per product type, the weighted average selling price was equal to or higher than the weighted average unit cost and where the volume of sales below unit cost was less than 20 % of sales being used to determine normal value, all domestic sales were regarded as being made in the ordinary course of trade and normal value was established on the basis of the weighted average prices actually paid for all domestic sales of that type.

Where, per product type, the weighted average selling price was lower than the weighted average unit cost, or where the volume of transactions made at a loss was equal to or higher than 20 % of sales being used to determine normal value, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable domestic sales.

(15) Two Indian companies were found to have no representative domestic sales volumes. As one company exported a type of the product concerned to the Community which was not sold on the domestic market by other cooperating Indian producers, normal value was therefore constructed in accordance with Article 2 (3) and (6) (a) of the Basic Regulation, namely on the basis of all costs of production incurred by that company when producing the product type in question plus a reasonable amount for selling, general and administrative costs and profits. The amount for selling, general and administrative costs and profits was established on the basis of the domestic sales of all types of the like product in the ordinary course of trade made by the other cooperating producers in the country concerned.

For the other producer, for which the volume of total domestic sales was not representative and which exported product types which were sold by other producers in the country concerned, normal value was calculated pursuant to the second subparagraph of Article 2 (1) of the Basic Regulation, by taking the weighted average of the ex works prices charged by other producers in the country concerned for representative domestic sales of the corresponding product type which were made in the ordinary course of trade.

2. Indonesia

(16) In view of the large number of Indonesian exporters, it was decided, pursuant to Article 17 of the Basic Regulation, to limit the investigation to the largest representative volume of exports which could reasonably be investigated within the time available. To this end, five companies, representing 88 % of the total volume of Indonesian exports to the Community during the investigation period, were selected. The sample was chosen in consultation with and with the consent of all nine Indonesian companies cooperating in the present anti-dumping proceeding.

(17) With regard to one Indonesian producer selected in the sample it should be noted that although the company submitted data concerning domestic sales, the data were not, as was found during the verification visit, verifiable because the company could not demonstrate to the satisfaction of the Commission whether or not such sales had been made to independent customers. Consequently, normal value could not be determined on the basis of domestic sales. In addition, the company was unable to provide evidence of the quantity produced and thus of its cost of production. Pursuant to Article 18 of the Basic Regulation, it was therefore concluded that normal value for this company should be based on the facts available which were found to be the weighted average of the normal values established for the other four Indonesian producers.

(18) As far as the determination of normal value for the remaining four Indonesian producers selected in the sample is concerned, it was found that total domestic sales volumes as well as the sales volumes per product type were representative, pursuant to Article 2 (2) and (4) of the Basic Regulation. Normal value was therefore based on the weighted average of the prices of domestic sales made in the ordinary course of trade as described in recital 14.

3. Thailand

(19) All cooperating Thai companies were found to have representative total domestic sales volumes in accordance with Article 2 (2) and (4) of the Basic Regulation. Normal value was therefore based on either the weighted average prices of those domestic sales which were made in the ordinary course of trade, or, where the domestic sales of a particular product type were not representative, pursuant to the second paragraph of Article 2 (1) of the Basic Regulation, on the weighted average of the ex works prices charged by other producers in the country concerned for representative domestic sales of the corresponding product type, made in the ordinary course of trade.

II. Export price

(20) As all cooperating exporters in each of the three countries concerned made export sales in the Community direct to independent importers, export prices were, in accordance with Article 2 (8) of the Basic Regulation, established on the basis of the prices actually paid or payable by these independent importers.

III. Comparison

(21) In accordance with Article 2 (10) and (11) of the Basic Regulation, for two Thai companies, for all Indonesian companies included in the sample and for all Indian companies, the weighted average normal value by product type was compared to the weighted average export price at the same level of trade, namely the ex factory level.

(22) With regard to the remaining four Thai exporters, pursuant to Article 2 (11) of the Basic Regulation the weighted average normal value was compared to the export price on a transaction-by-transaction basis because it was found that there was a pattern of export prices which differed significantly among different customers or time periods and that the method used in recital 21 would not have reflected the full degree of dumping being practised.

(23) For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and shown to affect price comparability. The adjustments were made, in accordance with Article 2 (10) of the Basic Regulation, in respect of physical differences, packing, transport, insurance, handling and ancillary costs, credit costs, indirect taxes and import charges as well as commissions.

(24) As far as requests for adjustments concerning import charges are concerned, it should be noted that none of those adjustments could be allowed in full. The requests were fully or partially rejected wherever it was found that the like product and the materials physically incorporated therein sold by the exporters in question on their domestic markets, and intended for consumption within those countries, did not bear any import charges. Thus, the conditions set out in Article 2 (10) (b) of the Basic Regulation had not been met.

IV. Dumping margin

1. **India**

(25) As far as the Indian producer Neo Sack Ltd is concerned, no dumping was found.

(26) As to the other cooperating Indian producers, the comparison revealed the existence of dumping.

(27) With regard to Polyspin Export Ltd and Polyspin Private Ltd it was found that both companies had four directors in common. Moreover, each of those directors as well as a third company owned shares in both companies. In addition, both companies shared certain facilities. Furthermore, Polyspin Private Ltd has a shareholding in Polyspin Export Ltd. In view of the close relationship found between these two companies there would be a high risk that anti-dumping measures could be circumvented by channelling exports to the Community through the company with the lower dumping margin if two different margins were established. It was therefore concluded that only one dumping margin, based on the weighted average of the dumping margins found for both, should be established for the two companies.

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

— Neo Sack Ltd	0 %
— Buildmet Private Ltd	26,8 %
— Gilt Pack	3,2 %
— Kanpur Plastipack	10,9 %
— Polyspin Export Ltd and Polyspin Private Ltd	22,0 %
— Shankar Packaging Ltd	20,4 %.

(29) For Indian producers/exporters which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with the provisions of Article 18 (1) of the Basic Regulation, as follows:

A comparison of the data on the volume of exports to the Community provided by the cooperating Indian producers/exporters with Eurostat statistics showed that (unlike in the case of Indonesia and Thailand) there was a high level of non-cooperation.

With regard to prices of imports, it should be noted that the only source available were Eurostat figures. These did not, however, distinguish between the different types of the product concerned originating in India and exported to the Community because, as far as the investigation period is concerned, they were all covered by one CN code. The Eurostat figures indicated a weighted average export price which was considerably lower than the weighted average export price established for cooperating producers. This is a clear indication that dumping margins of non-cooperating producers were higher than those found for cooperating producers.

It was therefore considered that the most reasonable facts available were those established in the investigation, namely the highest weighted average dumping margin found, determined with regard to an individual product type, was considered to be the most appropriate for these purposes.

This approach was also considered necessary in order to avoid creating a bonus for non-cooperation and an opportunity for circumvention.

Thus, the dumping margin provisionally established for Indian exporters other than those cooperating in this proceeding, expressed as a percentage of the free-at-Community-frontier price, is 47,2 %.

2. Indonesia

(30) The comparison revealed the existence of dumping with regard to imports of the product concerned originating in Indonesia.

(31) The weighted average dumping margins provisionally established for each Indonesian producer selected in the sample and expressed as a percentage of the free-at-Community-frontier price are as follows:

— PT Budi Indoplast Indah	74,3 %
— PT Hardo Soloplast	28,4 %
— PT Kemilau Indah Permana Ltd	31,0 %
— PT Poliplas Indah Sejahtera	38,0 %
— PT Simoplas	23,5 %.

(32) For those Indonesian exporters which cooperated in the proceeding but were not included in the sample, the dumping margin was provisionally fixed at the level of the weighted average of the dumping margins established for PT Hardo Soloplast, PT Kemilau Indah Permana Ltd, PT Poliplas Indah Sejahtera and PT Simoplas, that is 28,3 %, expressed as a percentage of the free-at-Community-frontier price. In accordance with Article 9 (6) of the Basic Regulation, the dumping margin established for PT Budi Indoplast Indah was not taken into consideration because, as set out in recital 17, this company did not provide the necessary information during the verification visit.

(33) For any Indonesian exporting producer or exporter which neither replied to the Commission's questionnaire nor otherwise made itself known, the dumping margin was determined on the basis of the facts available in accordance with the provisions of Article 18 (1) of the Basic Regulation, as follows:

Given that a comparison of the data concerning exports to the Community provided by all the cooperating Indonesian producers/exporters and the Eurostat statistics indicated a very high level of cooperation, namely nearly the totality of all exports, the Commission considered that the most reasonable facts available were those established in the investigation and that, since there was no reason to believe that a non-cooperating producer/exporter had dumped at a lower level than the highest found, the highest dumping margin found for a producer included in the sample was the most appropriate for these purposes. Thus, for non-cooperating producers and exporters in Indonesia the dumping margin was fixed at 74,3 % expressed as a percentage of the free-at-Community-frontier price.

This approach was also considered necessary in order to avoid creating a bonus for non-cooperation and an opportunity for circumvention.

3. Thailand

(34) With regard to all cooperating Thai producers, the comparison revealed the existence of dumping with regard to imports of the product concerned originating in Thailand.

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

— Bangkok Polysack Co. Ltd	13,8 %
— CP Poly-Industry Public Co. Ltd	63,9 %
— Laemthong Industry Co. Ltd	83,4 %
— Pacific Polysack Co. Ltd	94,9 %
— Thai Coating Industrial Public Co. Ltd	29,1 %
— Thai Plastic Products Co. Ltd	15,8 %.

(36) For any Thai exporting producer or exporter which neither replied to the Commission's questionnaire nor otherwise made itself known, the dumping margin was determined on the basis of the facts available in accordance with the provisions of Article 18 (1) of the Basic Regulation as follows:

Given that a comparison of the data concerning exports to the Community provided by all the cooperating Thai producers/exporters and the Eurostat statistics indicated a very high level of cooperation, namely nearly the totality of all exports, the Commission considered that the most reasonable facts available were those established in the investigation and that, since there was no

reason to believe that a non-cooperating producer/exporter had dumped at a lower level than the highest found, the highest dumping margin found for a cooperating producer was the most appropriate for these purposes. Thus, for non-cooperating producers and exporters in Thailand the dumping margin was fixed at 94,9 %, expressed as a percentage of the free-at-Community-frontier price.

This approach was also considered necessary in order to avoid creating a bonus for non-cooperation and an opportunity for circumvention.

D. COMMUNITY INDUSTRY

(37) The Commission examined whether the complainant represented a major proportion of total Community production of the product concerned, and arrived at the conclusion that the complainant producers, who have cooperated with the Commission during the investigation period, manufactured a major share (75 %) of the Community's total output of the like product during this period. For the remainder of this Regulation, the term 'Community industry' refers only to the cooperating complainant Community producers manufacturing the goods concerned in the Community, within the meaning of Article 4 of the Basic Regulation.

E. INJURY

1. Cumulative assessment of imports

(38) The Commission considered whether imports of bags and sacks originating in India, Indonesia and Thailand should be assessed cumulatively in accordance with Article 3 (4) of the Basic Regulation.

(39) In this respect, the Commission considered all criteria set out in Article 3 (4) which need to be met to cumulate imports from the three countries concerned. The analysis made led to the following conclusions:

— the margin of dumping relating to each country, as shown in recitals 25 to 36, was more than *de minimis*,

— the volume of imports from each country was not negligible, as shown in recital 41,

— a cumulative assessment of the effects of the imports was appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product: it should be noted that the exporters of the countries concerned used the same trade channels and had the same low-price policy resulting in a high level of price undercutting (see recital 45).

All these criteria being met, it was concluded that there were sufficient grounds to cumulate the imports from the countries concerned.

2. Community consumption

(40) Community consumption increased from approximately 43 000 tonnes in 1992 to approximately 47 000 tonnes during the investigation period, an increase of about 9 %.

3. Volume and market share of dumped imports

(41) The volume of dumped imports from the countries concerned increased continuously from 1992 to the investigation period, namely from approximately 2 000 to approximately 7 650 tonnes from India, from approximately 7 200 to approximately 8 150 tonnes from Indonesia and from approximately 3 800 to approximately 4 900 tonnes from Thailand.

The total volume of dumped imports from the countries concerned increased from approximately 13 000 tonnes in 1992 to approximately 20 700 tonnes during the investigation period, giving an increase of approximately 59 %.

(42) Total market share held by those countries increased from 30,2 % in 1992 to 44 % during the investigation period. During the same period, the trend in the market share for each of the countries concerned was as follows: from 4,6 to 16,3 % for India, from 16,8 to 17,3 % for Indonesia and from 8,7 to 10,4 % for Thailand.

4. Price undercutting

(43) As regards price undercutting, the analysis was made by type of bag. For each of these types, the Commission compared the exporters' and the Community industry's weighted average selling prices free of all rebates and taxes, calculated on the basis of sales to the first unrelated importer or customer, duly adjusted for differences in the level of trade. The average selling price of the Community industry was weighted in relation to the sales volume of each type of the product. The Community industry's average selling price was then compared to the corresponding figures for each exporter concerned.

(44) In order to take account of differences in physical characteristics, adjustments have been applied on the basis of the difference in costs of production. In order to arrive at a comparable level of trade with sales of the like product produced by the Community industry, the Indian, Indonesian and Thai import prices were adjusted by an importer's margin including customs duties, handling, financing, storage, general and administrative expenses and profit (5 %). The determination of these margins has been based on the relevant information received from importers in the course of the investigation.

(45) On this basis the margins of undercutting, expressed as a percentage of the Community industry's prices, ranged from 19,7 % to 33,1 % for India, from 34,6 % to 52,2 % for Indonesia and from 31,7 % to 47,3 % for Thailand.

5. Situation of the Community industry

(a) *Production*

(46) The volume of production of the product concerned by the Community industry decreased constantly, from 9 976 tonnes in 1992 to 9 065 tonnes during the investigation period, a decrease of 9,1 %. In line with production, the rate of capacity utilization decreased by 7,6 % during the same period, from 55,5 % to 51,3 %.

(b) *Volume of sales and market shares*

(47) Sales by the Community industry destined for the Community market decreased from approximately 10 100 tonnes in 1992 to approximately 9 800 tonnes during the investigation period, a decrease of 2,3 %. Notwithstanding an increase of about 9 % in Community consumption, the market share of the Community industry decreased by 10,4 % during the same period, from 23,4 % to 21 %.

(c) *Prices*

(48) The weighted average selling price of the Community industry on the Community market decreased by 3,9 % between 1992 and the investigation period.

(d) *Profitability*

(49) The decline in sales of the product concerned by the Community industry and the simultaneous price depression on the Community market resulted in financial losses during the period under consideration (losses of 0,14 % in 1992 to 0,55 % during the investigation period, with a peak of 1,79 % in 1993).

(e) *Investments*

(50) The financial losses have had negative effects on the Community industry's ability to carry out investments to increase its productivity. Investments decreased by 53,8 % between 1992 and the investigation period.

(f) *Employment*

(51) Employment in the production of the product concerned decreased continously during the period under consideration, falling by 16,9 % between 1992 and the investigation period.

(g) *Conclusion*

(52) The Commission thus determined that the Community industry's production, capacity utilization, market share, prices, profitability, investments and employment have followed a negative trend and concluded at the provisional stage that the Community industry had suffered material injury within the meaning of Article 3 (1) of the Basic Regulation.

F. CAUSATION OF INJURY

(53) In accordance with Article 3 (6) of the Basic Regulation the Commission examined the extent to which the material injury suffered by the Community industry was caused by the volume and price level of the Indian, Indonesian and Thai dumped imports. The Commission also examined whether other factors had caused or contributed to that injury in order to ensure that injury caused by these other factors was not attributed to the dumped imports concerned. Other factors considered were the trend in consumption, competition from non-cooperating producers in the Community, imports from countries not subject to this investigation, the export performances of the Community industry and the economic and technological environment.

Impact of dumped imports from India, Indonesia and Thailand

(54) According to the information available it was concluded that bags produced by the Community industry and those imported from India, Indonesia and Thailand were in direct competition with each other in the Community market on the basis of price. This is explained by the fact that there are no significant differences in quality between the imported products and the Community-produced ones. The products are aimed at the same customers, namely end-users or agents (distributors), through similar sales channels in the Community market overall. Given the transparency of the market, the fact that low-priced dumped imports are present has had a direct impact on the situation of Community industry.

(55) To appreciate the impact of the imports from India, Indonesia and Thailand, it should be pointed out that their volume has risen steadily since 1992 to reach a level more than 58 % higher during the investigation period. The market share of these imports increased by 46 % while their average resale price decreased by 3,3 % during the same period. Those imports were made at significantly dumped prices undercutting those of the Community industry.

In the meantime, the Community industry's situation has deteriorated, with its market share decreasing by 10,4 % and its average resale prices by 3,6 %. Consequently, there is a clear coincidence in time between the increase in the volume of imports and the difficulties encountered by the Community industry.

(56) According to Article 3 (5) of the Basic Regulation the examination of the impact of the dumped imports on the Community industry concerned could also include an evaluation of the magnitude of the actual dumping margin found for the exporters concerned. In the current investigation these average dumping margins vary between 47 and 94 %.

(57) Finally, it should also be noted in this respect that, following the imposition of anti-dumping measures against the People's Republic of China by Council Regulation (EEC) No 3308/90 [1], as amended by Regulation (EEC) No 2346/93 [2], the Community industry could not fully benefit from the effect of these measures as the decreasing imports from China were immediately compensated for by an increase in dumped imports from India, Indonesia and Thailand. Those imports are made into the Community through the same sales channels and through the same operators as imports of Chinese products.

Impact of other factors

Evolution of consumption

(58) As was stated in recital 40, Community consumption increased by about 9 % between 1992 and the investigation period and by 23 % between 1993 and the investigation period. Consequently the development in the demand for the product concerned cannot be the cause of the difficulties experienced by the Community industry. On the contrary, it should be underlined that, despite an increasing market, the market share of the Community industry has decreased by 10 %.

Other Community producers

(59) During the investigation period the market share held by the other Community producers who did not participate in the proceeding was limited and was estimated at around 6 % of the overall Community market. There is no information to indicate that the behaviour of these producers might have had a materially injurious impact on the complaining Community industry, nor is there any evidence to demonstrate that their economic situation developed differently from that of the Community industry.

Moreover, on the basis of individual submissions, it seems that the major part of the other producers in the Community faced the same difficulties as the complaining producers.

Other imports to the Community

(60) The other imports into the community originated mainly in Bulgaria, the People's Republic of China, Hungary, Côte l'Ivoire, Slovenia and Turkey.

The volume of imports and market share of all the other countries, excluding the People's Republic of China, remained stable during the period under investigation. The level of prices was not such as to contribute materially to the increasing deterioration of the situation of the Community industry.

As regards imports from the People's Republic of China, it was established that their market share had decreased significantly between 1992 and 1994. However, as mentioned above, it should be noted that the Council had already determined in 1990 that these imports were being dumped and that they had caused material injury to the Community industry. An expiry review is currently being carried out but the results of this review are not yet available. In any event, even if it were concluded that the imports from the People's Republic of China had caused injury to the Community industry, this would not alter the fact that the injury caused by the dumped imports concerned by this proceeding, taken in isolation, was material.

Export performance of the Community industry

(61) The export activity of the Community industry has always represented a very marginal part of the overall sales of the Community industry. In 1992 exports outside the Community represented around 6,5 % of total sales by the industry of the product concerned; in 1994 they represented around 4 %. In absolute terms, export sales of the Community industry decreased from 732 to 384 tonnes during the period 1992 to 1994 and this loss was mainly incurred by one particular Community producer.

The reduced importance of the decrease in export market sales (−348 tonnes) must be seen against the decrease in production during the same period (−912 tonnes) and the loss of market share expressed in tonnes (−1 240 tonnes) by the Community industry.

It follows from the above that any change in the Community industry's export performance cannot have had any significant effect on the injury suffered, in particular with regard to capacity utilization and employment.

[1] OJ No L 318, 17. 11. 1990, p. 2.
[2] OJ No L 215, 25. 8. 1993, p. 1.

Economic environment

(62) The Commission agrees that the general recession in the Community has also caused a downturn in the market in the plastics sector, mainly in 1993. However the effects of the downturn virtually disappeared during the investigation period. Indeed, comparing 1994 with 1993, the market recovered strongly, leading to a general increase of sales prices and a 25 % increase in consumption.

(63) In order to isolate as far as possible the impact of the dumped imports on the Community industry, the Commission has analysed and compared the relative performances both of the Community producers and of the exporters in the three countries under investigation in terms of market share and average resale prices during the downturn (1992/93) and during the upsurge (1993/94).

(64) Between 1992 and the downturn period (1993), while consumption decreased by 10 %, the Community industry slightly increased its market share by 1,3 percentage points. At the same time it had to decrease its sales prices by an average of 7,7 %. The exporters concerned also decreased their low dumped prices by 1,7 % and managed to increase their market share by 6,4 percentage points in the contracting market. This analysis suggests that despite the negative effects of the downturn, dumped imports gained market share while the Community industry only maintained its own, incurring considerable financial losses given the low level of prices in the market.

(65) In 1994, despite a general upsurge, the recovery of the Community industry was heavily hampered by a combination of the drastic increase in the volume of dumped imports (plus 55 %) and the level of the prices applied by the exporters under investigation. Notwithstanding the abovementioned increase in demand (plus 25 %) in the Community market in 1994, the market share of the Community industry decreased by 4 percentage points whereas the market share of Indian, Indonesian and Thai exporters increased by 9 percentage points.

(66) Furthermore, in absolute terms, the increase in consumption in 1994 compared to 1993 represented approximately 9 000 tonnes. The Community industry increased its sales by 424 tonnes while the exporters under investigation increased theirs by 7 800 tonnes. Accordingly they were by far the main beneficiaries of the growth in the market in 1994.

(67) As to the average resale prices applied during the upsurge (1994), the Community producers increased theirs by 4,4 % in 1994 compared to 1993, and this was still 3,5 % below the level of 1992 prices. In the meantime the exporters concerned by the current investigation decreased theirs by 4,3 %, leading to the results of the above injury assessment.

(68) On the basis of the above facts it is obvious that the imports under investigation gained market share due to the low level of their prices. This was to the detriment of the Community industry, which incurred serious financial losses.

The Commission therefore concluded that even though the downturn certainly had a negative impact on the market overall, the negative effects of dumped imports in terms of volume and prices strongly affected the situation of the Community industry.

Technological environment and investments

(69) Some exporters have presented the technological situation of the Community industry as another reason for its precarious, negative situation. It has been argued that the reluctance of the Community industry to undertake investments in new technologies and added capacity has undoubtedly contributed to any injury it may have suffered.

(70) The Commission has found that the investments made by the Community industry dropped by over 53 % during the investigation period. The analysis of this situation has shown that it was not a reluctance on the part of the Community industry to invest but a need to control costs as a result of the financial losses incurred by the sales of the product concerned. This negative situation was the consequence of the market situation caused by both the low level of the resale prices and the increasing volume of dumped imports.

Conclusion on causality

(71) Given that the bags are technically a simple product offered through similar sales channels in the Community and that the market is transparent, the Commission considers that for this reason the low-priced imports had substantial negative impact on the Community industry.

(72) For all the reasons stated above, although the Commission agrees that the negative situation of the Community industry has not been caused solely by imports of bags from India, Indonesia and Thailand, it must be concluded that the impact of the prices and increasing volume of dumped imports from the three countries, taken in isolation, caused material injury to the Community industry.

G. COMMUNITY INTEREST

General

(73) On the basis of all the available information the Commission considered whether it could be clearly concluded that it would not be in the Community interest to apply measures.

For this purpose, the Commission considered the impact of possible measures and the consequences of not taking measures on all parties involved in the proceeding, also taking into account the competitive environment and the principle of non-discriminatory treatment of dumped imports.

Consequences for the Community industry

(74) When assessing the Community interest, special consideration has to be given to the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition. Indeed, the Commission found that since 1992 the Community industry had made efforts to rationalize production, remain competitive and keep its market share. This shows that the industry is not ready to abandon this segment of production where the market exists.

(75) However, the Community industry cannot continue to bear this negative situation at any cost. Owing to the high quantities of low-priced imports, the Community industry's economic situation has been considerably weakened since 1992. This is explained by the financial losses incurred by the Community's industry.

(76) With regard to the examination of Community interest and the impact on the Community industry, the Commission has to take into consideration its future development if dumped imports from the three countries concerned are allowed to continue. The facts established in the investigation indicate that this would certainly lead to further negative effects not only on the Community industry, with direct negative consequences on investments, which decreased by 53 %, and on employment, which decreased by 16 %, but also to indirect negative effects on the supply industry.

(77) As the major problem of the Community industry is the negative return on sales for the product concerned and as a simple increase in the sales volume might not be sufficient to allow the Community industry to recover from the injury suffered, measures would need to lead to a certain price in the Community market in order to be effective.

However, the future trend in prices and a positive return on sales for the product concerned depend not only on the imposition of anti-dumping measures but also on a number of other factors, such as the level of the raw material price and the development of competition after the imposition of the proposed anti-dumping measures, which are examined here-in-after.

Impact on the user industries

(78) To appreciate the eventual impact on downstream industries of applying measures, the Commission has analysed the potential uses of bags in the Community market. This has shown that they are mainly in the agricultural sector for example, for packing wheat, barley, sugar and other vegetable and agricultural products). At the same time the packaging, chemical (packing of fertilizers) and, to a lesser extent, other industrial sectors, are also significant users of bags.

(79) The impact of the imposition of measures on the downstream industries would be felt mainly through an eventual increase in the resale price of the bags and a resulting increase in this industry's costs of production. Taking into account the fact that most of the imports from the three countries concerned are 'simple' bags — that is to say bags whose unit price is particularly low — the Commission is of the opinion that any such increase in sales prices would only have a limited effect on the user industry.

On the other hand it should be noted that, given the various categories of like products and the different impact of injurious dumped imports on each of these categories as well as the great variation in the levels of the dumping duties proposed, which range from 0 to 94,9 %, any assessment of possible price increases is very difficult to make and any forecast of the impact on users highly uncertain.

(80) On the basis of the above elements and in view of the fact that taking measures would certainly lead to an increased presence of competitors on the Community market, it may be concluded that any price increase would not be disproportionately disadvantageous to Community users, whether *vis-à-vis* one another or as against competitors located outside the Community, as the effect on the cost of production of the user industries would only be limited.

Impact on importers

(81) Several submissions were received from importers in the Community located mainly in the Member States where there are no production facilities for bags, namely the Netherlands, Germany, the United Kingdom, Belgium and Italy. Analysis of

the submissions has shown that some of the importers also manufacture certain types of bag and probably constitute an important part of the non-complaining industry.

(82) They put forward three main reasons for concluding that imposing measures would be against the Community interest. Firstly, as the Community industry is not able to fill the needs of the whole Community market, any change in the supply of the current market cannot be made without running the risk of a general supply shortage. Secondly, any measures would only have direct negative consequences on the price of bags and would thus increase importers' costs, reduce their profit margin and hit the end-user industries. Thirdly, they claimed that any action to reinforce the situation of the Community industry would lead to an abusive dominant position in the Community market overall with adverse effects on prices. They argued that these negative effects, which affect mainly users and importers in the Community market in terms of prices, supply shortage, competitive environment and also employment, are against the Community interest.

(83) The Commission considers that without taking any measures to restore fair trade some importers may derive some profit from buying bags at dumped low prices. However, it should be noted that this would not, as was stated in recitals 78 to 80, necessarily benefit the user industry. Moreover, not taking measures could only be detrimental to the other interested parties in the Community and would further encourage dumped imports in the Community market. As far as the other arguments are concerned, they are analysed below.

Impact on the competitive environment in the Community market

(84) As far as the competitive environment of the Community market is concerned, user industries and other economic operators have always enjoyed the presence of a wide range of competitors in the market, since the Community producers, even exploiting their entire production capacity, could only satisfy roughly 40 % of the demand on the Community market. Imports from third countries will therefore always be necessary. After the imposition of anti-dumping measures, producers located in the countries concerned would be able to promote their exports to the Community at fair prices, while the People's Republic of China together with other countries (such as Turkey, Bulgaria and Côte d'Ivoire) could even increase their exports, attracted by remunerative price levels, and thus further intensify fair competition on the Community market. As far as allegations about an abuse of a dominant position are concerned, it was concluded that, in the light of the competitive forces present in the Community market, such allegations were without foundation.

Non discriminatory treatment of dumped imports

(85) It should furthermore be recalled that the current investigation should also be considered in the light of the anti-dumping measures in force against imports of the product concerned originating in the People's Republic of China. A review investigation is currently being carried out with regard to these measures. It is considered necessary to ensure non-discriminatory treatment of all dumped imports. It should also be noted that the dumped imports under investigation replaced to a large extent the dumped imports from the People's Republic of China and were made through the same sales channels.

Conclusion on Community interest

(86) On the basis of the above facts and considerations and after having examined the arguments submitted by importers of the product concerned and by several trade associations, and in particular giving special consideration to the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition, the Commission found, on balance, that provisionally there were no compelling reasons against the introduction of anti-dumping measures. Rather, it is concluded that the Community's reasonable interest requires that the Community industry be protected against the unfair trading practices of the dumped imports originating in India, Indonesia and Thailand.

H. PROVISIONAL DUTY

(87) According to Article 7 (2) of the Basic Regulation, the level of the provisional duty should be equal either to the margin of dumping or the amount necessary to remove injury, whichever is lower.

(88) Since the injury consisted mainly of loss of market share and, in particular, financial losses, the removal of such injury would be achieved through the establishment of a non-injurious export price level, which means a level at which full costs of production could be covered and which would allow a reasonable profit to be attained. In order to achieve this, the price of the imports from India, Indonesia and Thailand should be increased accordingly.

(89) Consequently, following consistent practice the Commission calculated, for the most representative and comparable (with those imported) categories of bags, the level of prices at which the injury caused by the imports concerned to the Community industry would be removed, namely a price level at which the Community industry could be able to cover its total costs and obtain a reasonable profit. With respect to a reasonable level of profit, the Commission used a rate of 5 % on turnover, a rate regarded by the Community industry as a strict minimum necessary to ensure the continuation of its operations. The Commission considered this level sufficient, given the mature nature of the product requiring only limited investment in research and development and in production equipment.

(90) This price was compared with the weighted average selling price of the exporters, free of all rebates and taxes, calculated on the basis of sales to the first unrelated importer or customer, duly adjusted to take account of the differences in distribution channels.

(91) In accordance with Article 7 (2) of the Basic Regulation, it was concluded at the provisional stage that the anti-dumping duties should be imposed at the level of the dumping margins found, because the dumping margins were all lower than the above levels of injury. Provisional anti-dumping duties should therefore correspond to the margins of dumping set out in recitals 28, 29, 31, 32, 33, 35 and 36.

I. FINAL PROVISIONS

(92) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is 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 120gr/m² or less and originating in India, Indonesia and Thailand. The product as described above falls within CN codes 6305 32 81 and 6305 33 91.

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

(a) 47,2 % 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 rate of duty:

	Rate of duty (%)	Taric additional code
Buildmet Private Ltd	26,8	8944
Gilt Pack	3,2	8945
Kanpur Plastipack	10,9	8946
Neo Sack Ltd	0,0	8947
Polyspin Export Ltd and Polyspin Private Ltd	22,0	8948
Shankar Packaging Ltd	20,4	8949

(b) 74,3 % 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 rate of duty:

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

(c) 94,9 % 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 rate of duty:

	Rate of duty (%)	Taric additional code
Bangkok Polysack Co. Ltd	13,8	8955
CP Poly-Industry Public Co. Ltd	63,9	8956
Laemthong Industry Co. Ltd	83,4	8957
Thai Coating Industrial Public Co. Ltd	29,1	8958
Thai Plastic Products Co. Ltd	15,8	8959

3. The provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

1. Without prejudice to Article 20 (1) of Regulation (EC) No 384/96, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

2. In accordance with the provisions of Article 21 (4) of Regulation (EC) No 384/96, the parties concerned may provide comments on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96, this Regulation shall apply for a period of six 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, 10 January 1997.

For the Commission

Leon BRITTAN

Vice-President