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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 96/1999

of 12 January 1999

amending Regulation (EC) No 1950/97 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 11(4) thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 1950/97 [2], the Council imposed, *inter alia,* a definitive anti-dumping duty of 36,0 % on imports of sacks and bags made of polyethylene or polypropylene (hereinafter 'product concerned') originating in India, with the exception of imports from several Indian companies specifically mentioned, which were either subject to a lesser rate of duty or to no duty at all. The product is currently classifiable within CN codes 6305 32 81, 6305 33 91, ex 3923 21 00, ex 3923 29 10 and ex 3923 29 90.

B. CURRENT PROCEDURE

(2) The Commission subsequently received applications for a review of the measures currently in force, namely a request for the initiation of a 'new exporter' review of Regulation (EC) No 1950/97, pursuant to Article 11(4) of the basic Regulation, from the Indian producers Hyderabad Polymers Pvt. Ltd, Pithampur Poly Products Ltd, Sangam Cirfab Pvt. Ltd and Synthetic Fibres (Mysore) Pvt. Ltd (hereinafter referred to as 'the companies concerned'). The companies concerned claimed that they were not related to any of the exporting producers in India subject to the anti-dumping measures in force with regard to the product concerned. Furthermore, they claimed that they had not exported the product concerned during the original period of investigation (1 April 1994 to 31 March 1995), but had exported the product concerned to the Community since then.

(3) The Commission examined the evidence submitted by the Indian exporting producers concerned and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 802/98 [3], a review of Regulation (EC) No 1950/97 with regard to the companies concerned and commenced its investigation.

By Regulation (EC) No 802/98, the Commission also repealed the anti-dumping duty imposed by Regulation (EC) No 1950/97 with regard to imports of the product concerned produced and exported to the Community by the companies concerned and directed customs authorities, pursuant to Article 14(5) of the basic Regulation, to take appropriate steps to register such imports.

(4) The product covered by the current review is the same product as the one under consideration in Regulation (EC) No 1950/97.

(5) The Commission officially advised the companies concerned and the representatives of the exporting country. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such request was received by the Commission.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).
[2] OJ L 276, 9. 10. 1997, p. 1.
[3] OJ L 115, 17. 4. 1998, p. 3.

The Commission sent a questionnaire to the companies concerned and received full replies within the deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out verification visits at the premises of the companies concerned.

(6) The investigation of dumping covered the period from 1 April 1996 to 31 December 1997 (hereinafter referred to as the 'investigation period').

(7) The same methodology as that used in the original investigation was applied in the current investigation.

C. SCOPE OF THE REVIEW

(8) As no request for a review of the findings on injury was made in this investigation, this review was limited to dumping.

D. RESULTS OF THE INVESTIGATION

1. New exporter qualification

(9) The investigation confirmed that the companies concerned had not exported the product concerned during the original period of investigation and that they had begun exporting to the Community after this period.

Furthermore, according to documentary evidence submitted, the companies concerned were able satisfactorily to demonstrate that they did not have any links, direct or indirect, with any of the Indian exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

Accordingly, it is confirmed that the companies concerned should be considered new exporters in accordance with Article 11(4) of the basic Regulation and thus individual dumping margins should be determined for them.

2. Dumping

A. *Normal value*

(10) In accordance with Article 2(2) of the basic Regulation it was examined whether the volume of each company's sales of the product concerned on the domestic market constituted overall at least 5 % of the volume of the exports of the like product to the Community. For all companies concerned it was established that the volume of domestic sales of the like product was at a level considerably in excess of the said 5 % threshold.

For each type of sacks and bags exported to the Community, it was then examined whether or not there were representative domestic sales of identical or directly comparable types. For each product type, the volume sold in India during the investigation period represented 5 % or more of the quantity of the comparable type of sacks and bags sold for export to the Community. Domestic sales of each product type exported were therefore considered to have been made in sufficient quantities within the meaning of Article 2(2) of the basic Regulation.

For the purposes of examining whether sales of the like product had been made in the ordinary course of trade, information supplied on cost of production was verified.

A number of material errors in the costs reported by the companies concerned were corrected. Most importantly, this related to the main component of the cost of production, the cost of raw materials, which had to be thoroughly revised for three of the said companies.

One company, which sustained losses throughout the investigation period, claimed that these losses should be considered as start-up losses and that its profitability should therefore be established on the basis of its 'normal' costs. This claim was rejected on the grounds that the length of the start-up phase exceeded the appropriate initial portion of the period for cost recovery, as referred to in Article 2(5) of the basic Regulation.

The Commission subsequently examined whether the domestic sales of each type of sacks and bags exported to the Community by the companies concerned could be considered to have been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation.

For those product types where it was determined that the weighted average selling price was equal to, or higher than, the weighted average unit cost and that the volume of sales below unit cost was 20 % or less of the total sales being used to determine normal value, all domestic sales were regarded as having been made in the ordinary course of trade. In accordance with Article 2(1) of the basic Regulation, normal value was thus based on the weighted average prices of all domestic sales of these product types corresponding to those exported to the Community.

For one product type where the volume of sales below unit cost was more than 20 % of the total

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.

For one exporting producer, which did not have sufficient domestic sales made in the ordinary course of trade, normal value was established on the basis of the weighted average of the prices charged by the other exporting producers subject to the investigation for representative sales of the corresponding product types on the domestic market made in the ordinary course of trade.

B. *Export price*

(11) Export prices were established on the basis of the prices actually paid or payable for the product concerned when sold for export to independent customers in the Community, in accordance with Article 2(8) of the basic Regulation.

C. *Comparison*

(12) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value by product type was compared, on an ex-factory basis, with the weighted average export price at the same level of trade.

For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect prices and price comparability. These adjustments were made, in accordance with Article 2(10) of the basic Regulation, in respect of physical characteristics, import charges, discounts and rebates, transport, insurance, handling and ancillary costs, packing, credit costs and commissions.

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. In accordance with Article 2(10)(b) of the basic Regulation, the requests were fully or partially rejected wherever it was found that the like product and the materials physically incorporated therein sold by the exporting producers in question on their domestic market and intended for consumption within that country, did not bear any import charges.

One exporting producer claimed an allowance for different levels of trade, pursuant to Article 2(10)(d) of the basic Regulation, on the grounds that on the domestic market the product was sold only to end-users, whereas on the export market it was sold only to distributors. However, that producer was unable to demonstrate consistent and distinct differences in functions and prices for the allegedly different levels of trade on the Indian domestic market. In view of the above, no adjustment was granted for differences in level of trade.

Another exporting producer claimed an allowance for differences between the quantities supplied and those contractually agreed. This claim could not be accepted since the difference in quantities was not related to differences in discounts and rebates and therefore did not affect price comparability.

D. *Dumping margin*

(13) The comparison showed that no dumping existed for exports of the product concerned to the Community made by Hyderabad Polymers Pvt. Ltd and Pithampur Poly Products Ltd during the investigation period.

With regard to Sangam Cirfab Pvt. Ltd and Synthetic Fibres (Mysore) Pvt. Ltd, it was found that both companies had the same managing director and the same shareholders. 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. The comparison revealed the existence of a *de minimis* dumping margin of 1,7 % for these two companies.

E. **AMENDMENT OF THE MEASURES BEING REVIEWED**

(14) Based on the findings made during the investigation, it is considered that imports into the Community of sacks and bags produced and exported by the companies concerned should not be subject to an anti-dumping duty. Regulation (EC) No 1950/97 should therefore be amended accordingly.

F. **DISCLOSURE AND DURATION OF THE MEASURE**

(15) The companies concerned were informed of the facts and considerations on the basis of which it is intended to propose the amendment of Regulation (EC) No 1950/97, and were given the opportunity to comment. Comments were received and taken into account where appropriate.

(16) The review carried out does not affect the date on which Regulation (EC) No 1950/97 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2)(a) of Regulation (EC) No 1950/97 is hereby amended by adding the following to the section headed 'India':

'— Hyderabad Polymers Pvt Ltd	0,0	8 106
— Pithampur Poly Products Ltd	0,0	8 155
— Sangam Cirfab Pvt Ltd	0,0	8 156
— Synthetic Fibres (Mysore) Pvt Ltd	0,0	8 157'.

Article 2

Customs authorities are hereby directed to discontinue registration pursuant to Article 3 of Regulation (EC) No 802/98.

Article 3

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

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

Done at Brussels, 12 January 1999.

For the Council
The President
E. BULMAHN