I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1763/2002

of 30 September 2002

amending Regulation (EC) No 1950/97 imposing definitive anti-dumping measures on imports of sacks and bags made of polyethylene or polypropylene originating, *inter alia*, in India

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] (the basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Previous investigations**

(1) By Regulation (EC) No 1950/97 [2], the Council imposed definitive anti-dumping measures on certain imports of sacks and bags made of polyethylene and polypropylene (hereinafter referred to as the product concerned) originating, *inter alia*, in India.

(2) This Regulation was subsequently amended by Regulations (EC) No 96/1999 [3] and (EC) No 2744/2000 [4] with the purpose of determining dumping margins for new exporters as foreseen in Article 11(4) of the basic Regulation.

2. **Present investigation**

(i) *Initiation*

(3) The European Association for Textile Polyolefins (hereinafter referred to as the applicant) lodged a request for an interim review, limited to the aspects of dumping for the product concerned originating in India, pursuant to Article 11(3) of the basic Regulation, on behalf of European producers representing a major proportion, in this case 65 %, of the total Community production of the product concerned.

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission published a notice of initiation in the *Official Journal of the European Communities* [5] and commenced the investigation.

(ii) *Investigation and sampling*

(5) The Commission officially advised the exporting producers known to be concerned, the representatives of the originating country, and the applicant, of the initiation of the review investigation, and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) A number of exporting producers in the countries concerned, as well as Community importers made their views known in writing. All parties who so requested were granted the opportunity to be heard.

(7) The Commission has determined that the number of exporting producers of the product concerned in India has increased significantly since the original investigation. It has therefore been decided to apply sampling techniques in accordance with Article 17 of the basic Regulation.

(8) In order to enable the Commission to select a sample, exporting producers and representatives acting on their behalf were requested to make themselves known within 15 days of the date of publication of the notice of initiation and to provide basic information on their production, domestic and export sales. The authorities of the country concerned were also contacted by the Commission with a request to assist it in the selection of the sample.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 276, 9.10.1997, p. 1.
[3] OJ L 11, 16.1.1999, p. 1.
[4] OJ L 316, 15.12.2000, p. 67.
[5] OJ C 26, 26.1.2001, p. 2.

(9) A total of 45 companies replied to the sampling questionnaire within the time limits. Of those, 22 had production and sales to the Community of the product concerned during the period between 1 December 1999 and 30 November 2000 (hereinafter referred to as the investigation period or IP).

(10) The choice of the sample was made in consultation with the representatives of the companies and the authorities of the country concerned. An agreement was reached on a sample of eight companies covering more than 80 % of the total exports of the product concerned to the Community during the IP.

(11) Nine companies not selected in the sample have requested individual examination. In view of the large number of requests which was even exceeding the number of companies selected in the sample, it was considered that such individual examinations would be unduly burdensome in the sense of Article 17(3) of the basic Regulation. Therefore, no such requests could be granted.

(12) The Commission sent questionnaires to the companies selected in the sample, and carried out verifications at the premises of the following selected companies in India:

— Gilt Pack Ltd, Indore,

— Hyderabad Polymers Private Ltd, Hyderabad,

— Kanpur Plastipack Ltd, Kanpur,

— Neo Sack Ltd, Indore,

— Polyspin Private Ltd, Rajapalayam and its related company Polyspin Exports Ltd, Rajapalayam,

— Pithampur Poly Products Ltd, Indore,

— Shankar Packaging Ltd, Vadodara.

(13) Subsequent to the verification carried out in India, the Commission collected information from importers of the product concerned in the Community. The following importers were also visited:

— Cojubel NV, Lendelede, Belgium,

— Eurea BVBA, Antwerp, Belgium,

— Rova NV, Oudenaarde, Belgium,

— Texbern SARL, Lyon, France,

— Markopulos SA, Athens Greece,

— Alex Pak SA, Athens, Greece.

(14) The Commission also collected information from and visited customs' authorities in the Member States.

(15) Owing to the complexity of the case and the difficulties found, the duration of the investigation has taken more than 12 months.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

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

(17) The product concerned is woven sacks and bags of a kind used for the packaging of goods, not knitted or crocheted, obtained from a polyethylene or polypropylene strip or the like of woven fabrics, weighing 120 g/m² or less and originating in India. This 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.

2. Like product

(18) It was established that the sacks and bags sold on the Indian market and the sacks and bags exported from India to the Community were identical, or closely resembling, in terms of physical characteristics and end-uses. Therefore, these sacks and bags were considered alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Non-cooperation

(19) The Commission's investigation revealed that four exporters representing the majority of exports from India supplied false and misleading information, and in a number of cases even deliberately forged and manipulated documents. A number of irregularities has been established including the incorrect reporting of product types, specifications, export destination, quantities and/or values on invoices and shipping documents in order to increase the average export price to non-dumped levels, the deliberate omission of transactions, or the presentation of unreliable accounting information. Product descriptions, quantities and weights found on the official documents provided by unrelated importers and custom authorities were often different from the ones submitted during the on-the-spot verification and from the information that had been reported to the Commission in the questionnaire reply. Evidence was also received of at least two attempts to persuade importers to submit manipulated documents to the Commission.

(20) The non-cooperating exporters have been informed individually in detail of the Commissions findings in this respect. Some of them nevertheless argued that the verified data for domestic sales and cost of production should not be disregarded because those irregularities would relate only to the export data.

(21) However, the nature and extent of the false and misleading information cast doubt on the integrity of all the data submitted by the companies, be it for the export or domestic market. It has therefore been decided to entirely disregard all the information provided and use other information available in respect of these four companies, in accordance with Article 18 of the basic Regulation. No individual dumping margin was calculated for these companies.

(22) For another company, whose information on the costs of production could not be considered entirely reliable, it was necessary to disregard some of the information provided and make partial use of facts available, in accordance with Article 18(1) of the basic Regulation. Findings were nevertheless mostly based on the information provided by the company.

(23) For the remaining three companies, it was considered that reasonably accurate findings could be established on the basis of the information provided, adjusted wherever necessary in view of the results of the on-the-spot verifications, in order to arrive at a dumping determination.

2. **Normal value**

(24) Normal value was established according to Article 2 of the basic Regulation. Therefore, it was first established whether the companies' total domestic sales of the like product were representative in comparison with their total export sales of the product concerned to the Community. In accordance with Article 2(2) of the basic Regulation, and since the total domestic sales volume exceeded 5 % of the total export sales volume to the Community, the domestic sales of the like product were found to be representative for three of the four companies for which an individual dumping margin was calculated.

(25) A similar test was subsequently performed for each of the product types sold domestically that were identical or directly comparable to the types sold for export to the Community. For each product type, it was established that the domestic sales were sufficiently representative in accordance with Article 2(2) of the basic Regulation, when the sales volume of that type exceeded 5 % of the sales volume of the identical or comparable types exported to the Community.

(26) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of the profitable sales to independent customers of the type in question. Domestic sales were considered profitable when the net sales value was equal or above the calculated cost of production of each type concerned (hereinafter referred to as profitable sales).

(27) As far as the costs of production are concerned, none of the companies had an established cost accounting system. A number of corrections had to be introduced to the cost allocation methods, which the companies had elaborated exclusively for the purpose of the present investigation, in particular regarding the allocation of raw material costs, on the basis of the findings of the on-the-spot verification.

(28) The cost of production of each product type sold on the domestic market, corrected as explained above, was compared to its net domestic sales price. In cases where profitable sales of each type represented 80 % or more of the total sales volume, the normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether all these sales were profitable or not. In cases where the proportion of profitable sales amounted to less than 80 %, but at least 10 % of total domestic sales, normal value was established as a weighted average of the domestic prices of profitable sales.

(29) In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value. This was the case for all but one product type of one company.

(30) In the absence of domestic sales made by other producers in the ordinary course of trade, normal value could not be established on the basis of prices of other sellers or producers.

(31) Normal value was therefore constructed in accordance with Article 2(3) of the basic Regulation, by adding to the manufacturing cost of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative costs (hereinafter referred to as 'SG&A') and a reasonable margin of profit.

(32) For the companies with a representative volume of domestic sales their own SG&A expenses were used. One company did not have a representative volume of domestic sales. For this company the weighted average of the actual amounts determined for the other three companies subject to investigation in respect of production and sales of the like product in the domestic Indian market was used, in accordance with Article 2(6)(a) of the basic Regulation.

(33) None of the cooperating companies had profitable sales representing 10 % or more of total domestic sales volume of the product concerned. In the absence of sales of the same general category of products from which a profit rate could have been derived, the Commission decided to use a profit rate of 5 % according to Article 2(6)(c) of the basic Regulation. This is considered a conservative estimate and is in line with the findings of the previous investigations.

3. **Export price**

(34) All companies made their export sales to the Community directly to independent importers. In accordance with Article 2(8) of the basic Regulation, their export prices were therefore established on the basis of the prices actually paid or payable by these independent importers.

4. **Comparison**

(35) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences in transportation, insurance, handling, loading and ancillary costs, credit cost, commissions and level of trade, affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(36) All companies claimed adjustments for differences in the level of trade on the basis that they sell to end-users on the domestic market and to traders on the export market.

(37) The investigation showed export prices which were at a different level of trade than the normal value, and that there were distinct differences in functions for these levels of trade as required by Article 2(10)(d) of the basic Regulation. However, as the existing difference in level of trade could not be quantified because of the absence of the relevant levels of trade on the Indian domestic market, a special adjustment was granted under Article 2(10)(d)(ii). This allowance was 10 % of the gross margin as used for the construction of the normal values, in the absence of any other information.

(38) Some companies claimed an adjustment for duty drawback under Article (2)(10)(b) of the basic Regulation. However, none of the companies could demonstrate that any import charges or indirect taxes were borne by the like product or by materials physically incorporated therein, when intended for consumption in the exporting country, as required by Article (2)(10)(b) of the basic Regulation. Therefore, no such adjustment could be granted.

(39) Some companies claimed an adjustment to the normal value for alleged differences in raw material costs between those used for the production of exported products and those used for domestic products. The claimed differences arise, in the case where raw materials are purchased domestically, either because a producer can still claim an amount equivalent to drawback when the products are exported, or because he can obtain an import licence, endorse it to a domestic supplier and in exchange for a discount in the raw material price.

(40) However, this kind of mechanism falls under Article (2)(10)(b) of the basic Regulation and therefore any such claims should be discussed in the scope of that Article. Consequently, there is no justification to make an adjustment under Article 2(10)(k). As explained under recital 38 an adjustment under Article 2(10)(b) is also not justified.

(41) Several companies claimed that in this review investigation a different methodology was applied as compared to the one applied in the investigation which led to the duty. Their allegation was that the Commission had requested a more detailed product classification, in order to compare normal value to export price, than in the original investigation.

(42) This claim cannot be accepted. It is not considered that a request for a clear, precise and realistic identification of the different types of product concerned, produced and sold, constitutes a change in methodology. The investigation has confirmed that the request of the Commission was relevant, justified and would not constitute an unduly burdensome requirement for the companies in question. The number of specifications having an impact on the cost and market value of the product concerned required a more detailed product specification than the one provided in the original investigation. This more detailed product description would allow a more precise comparison between normal value and export price of clearly defined and identical product types. In fact, when confronted with the striking discrepancies in terms of prices and costs within what the companies claimed to be a same product type, one of these companies has reconsidered its refusal to report the product types as requested, and within 24 hours has provided such information.

5. **Dumping margins**

(i) *Companies with an individual dumping margin*

(43) For the companies within the sample for which no use was made of the provisions of Article 18 of the basic Regulation (see recital 23) dumping margins were established individually on the basis of a comparison of the weighted average normal value by product type with a weighted average export price by product type.

(44) Polyspin Exports was found to be related to Polyspin Private during the investigation period. Both companies have two directors in common. In view of the close relationship found between these companies, there would be a high risk that the anti-dumping measures could be circumvented by channelling exports to the Community through the company with the lower dumping if two different dumping margins were established. It was therefore concluded that only one margin, based on the weighted average of the dumping margins found in each company, should be established for the two companies as was also the case in the original investigation. The dumping margins are, expressed as a percentage of the cif net free-at-Community-frontier price, before duty:

— Hyderabad Polymers Pvt Ltd 24,3 %

— Polyspin Export Ltd and Polyspin Private Ltd 17,2 %.

(45) For the company in respect of which partial use was made of the provisions of Article 18 of the basic Regulation (see recital 22), a pattern of export prices which differ significantly between purchasers and regions was established. The export prices varied significantly by region, and by purchaser. Hence, the full degree of dumping being practised was not reflected in the comparison of a weighted average normal value by product type with a weighted average export price by product type. The company argued that the variation among customers and regions could actually be attributed to different product types. However, a breakdown by product type shows a similar range of variation for the types which are sold in sufficient quantity to allow for such an analysis. This argument was therefore rejected. A comparison of individual export prices and individual normal values for individual transactions, on the other hand, would have not have been feasible and consequently would not have reflected the full degree of dumping due in particular to the lack of a sufficient number of comparable domestic transactions. Since it was found that there was a pattern of export prices which differed significantly between purchasers and regions, and as neither the weighted average to weighted average nor the transaction by transaction method would have reflected the full degree of dumping, the dumping margin was established on the basis of a comparison by product type of the weighted average normal value with the prices of all individual export transactions in accordance with Article 2(11) of the basic Regulation. The dumping margin, expressed as a percentage of the cif net free-at-Community-frontier price, before duty is:

— Pithampur Poly Products Ltd	6,7 %.

(ii) *Companies for which no individual margin was calculated*

(46) The dumping margin for companies which submitted the necessary information requested in Article 17 of the basic Regulation in due time, which expressed their willingness to cooperate in the sample, and which produced and exported the product concerned to the Community during the investigation period, but which were not selected in the sample and were not examined individually, has been established on the basis of the weighted average dumping margin of the companies in the sample pursuant to Article 9(6) of the basic Regulation. Since, according to this Article, the margins established in the circumstances referred to in Article 18 of the basic Regulation must be disregarded, the sample now represents only 20 % of the exports of the product concerned to the Community during the investigation period by the companies willing to cooperate. Given the circumstances, namely the impossibility of re-constituting a new and more representative sample, this is still considered sufficiently representative of the total exports to the Community. It should also be noted that the companies which were not chosen for the sample also account for only 20 % of total Indian exports to the Community (see recital 10). This weighted average dumping margin was, expressed as a percentage of the cif net free-at-Community-frontier price before duty, 20,6 %.

(47) For the four companies for which an individual dumping margin could not be calculated for the reasons given in recital 20 the Commission made use of the information available pursuant to Article 18 of the basic Regulation. The Commission also considered that the level of the dumping margin established for these companies, relative to that found for the cooperating companies, should not provide an incentive to non-cooperation. Accordingly it was decided to apply the weighted average of the highest dumping margins found for a number of product types sold in representative quantities by the companies for which an individual calculation could be made, that is, 33,5 %. This duty should also apply to Naviska Packaging, a company related to Gilt Pack Ltd which changed its name to Giltpac International India Private Limited after the investigation period.

(48) The dumping margin for all other non-cooperating companies was set according to the information available, at the same level as that for companies under recital 47. This approach was considered necessary in view of the high degree of non-cooperation and in order to avoid the risk of circumvention.

D. **PROPOSED AMENDMENT OF THE MEASURES UNDER REVIEW**

(49) According to Article 9(4) of the basic Regulation, the duties should not exceed the margin of dumping established but should be less than the margin if such lesser duty would be adequate to remove the injury of the Community industry. Given the fact that this review is limited to the examination of the dumping aspects, the level of duties imposed should not be higher than the injury levels found in the original investigation.

(50) Since the injury levels found in the original investigation are in every case higher than the dumping margins found in the present review, the level of the duties should be set at that of the dumping margins found:

— Aditya Bags Ltd	20,6 %
— Big Bags India Pvt Ltd	20,6 %
— Big Bags International Pvt Ltd	20,6 %
— Buildmet Fibres Private Ltd	20,6 %
— Cigfil Limited	20,6 %
— Gilt Pack Ltd and Giltpac International India Private Ltd	33,5 %

— Hyderabad Polymers Pvt Ltd	24,3 %
— Innova Polypak Private Ltd	20,6 %
— Kanpur Plastipack Ltd	33,5 %
— M/S Polyweave	20,6 %
— M/S TPI India Limited	20,6 %
— Neo Sack Ltd	33,5 %
— Olive Commercial Co. Ltd	20,6 %
— Polyspin Export Ltd and Polyspin Private Ltd	17,2 %
— Pithampur Poly Products Ltd	6,7 %
— Sangam Cirfab Pvt Ltd	20,6 %
— Shankar Packaging Ltd	33,5 %
— Subham Polymers Ltd	20,6 %
— Superpack Ltd	20,6 %
— Synthetic Fibres (Mysore) Pvt Ltd	20,6 %
— Tulsyan Nec Ltd	20,6 %
— Vijay Chemicals & Plastics Pvt Ltd	20,6 %
— Virgo Polymer Ltd	20,6 %
— All other companies	33,5 %.

E. **UNDERTAKINGS**

(51) In the light of the provisions of Article 15 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 concerning Developing Country Members, the Commission informed the cooperating exporting producers that it was ready to explore the possibilities of constructive remedies, including any offer of price undertakings.

(52) Fourteen Indian exporting-producers offered price undertakings in accordance with Article 8(1) of the basic Regulation.

(53) The investigation has shown that the product concerned comprises numerous and evolving differentiating features, which can substantially affect sales prices. These features would make any system of undertaking prices (in the form of minimum import prices) particularly complex and difficult to enforce, in particular given the poor record of cooperation shown in the sampling exercise.

(54) Moreover, in a number of cases the product classification proposed was not sufficiently detailed to allow a proper monitoring, or the price level proposed did not allow for the removal of the injurious dumping.

(55) In addition, most of the exporters which offered undertakings also sell similar products not covered by the present investigation (such as jumbo bags) to by and large the same customers in the Community and perform different types of job work for other Indian companies. The potential for circumvention of the measures through price compensation and export channelling is therefore considered high.

(56) In view of the above, it was concluded that any undertakings would present both considerable monitoring and enforcement difficulties and unacceptable risks. Therefore, it was not considered appropriate to accept any of the undertakings offered.

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

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

(58) 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

In Regulation (EC) No 1950/97, Article 1(2)(a) is replaced by the following:

'(a) 33,5 % for sacks and bags originating in India (TARIC additional code 8900) with the exception of imports manufactured by the following companies, which shall be subject to the following rates of duty:

Company	*Rate of duty (%)*	*TARIC additional code*
Aditya Bags Ltd	20,6	8424
Big Bags India Pvt Ltd	20,6	8424
Big Bags International Pvt Ltd	20,6	8424
Buildmet Fibres Private Ltd	20,6	8944
Cigfil Limited	20,6	8424
Gilt Pack Ltd and Giltpac International India Private Ltd	33,5	8945
Hyderabad Polymers Pvt Ltd	24,3	8106
Innova Polypak Private Ltd	20,6	8424

Company	*Rate of duty (%)*	*TARIC additional code*
Kanpur Plastipack Ltd	33,5	8946
M/S Polyweave	20,6	8424
M/S TPI India Limited	20,6	8424
Neo Sack Ltd	33,5	8947
Olive Commercial Co. Ltd	20,6	8424
Polyspin Export Ltd and Polyspin Private Ltd	17,2	8948
Pithampur Poly Products Ltd	6,7	8155
Sangam Cirfab Pvt Ltd	20,6	8156
Shankar Packaging Ltd	33,5	8949
Subham Polymers Ltd	20,6	8424
Superpack Ltd	20,6	8424
Synthetic Fibres (Mysore) Pvt Ltd	20,6	8157
Tulsyan Nec Ltd	20,6	8424
Vijay Chemicals & Plastics Pvt Ltd	20,6	8424
Virgo Polymer Ltd	20,6	8424'

Article 2

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

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

Done at Brussels, 30 September 2002.

For the Council

The President

P. S. MØLLER