



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

Subject: New exporter review with regard to the anti-dumping proceeding concerning imports of sacks and bags made of polyethylene or polypropylene originating, *inter alia*, in India

The above review was initiated by Commission Regulation (EC) No 621/2000 which was published in the Official Journal of the European Communities L 75 of 24 March 2000. All interested parties were given the opportunity to submit their comments in due course.

The exporting producer's sales to the Community consisted of a single shipment and did not permit a meaningful assessment of the situation of dumping as regards this exporting producer. Moreover, the company did not supply a satisfactory questionnaire reply. It was therefore concluded that the weighted average duty of the Indian companies investigated during the original anti-dumping investigation, i.e. 10.5%, would constitute the most appropriate anti-dumping duty for the company concerned.

On this basis it is proposed to amend the Council Regulation in force accordingly.

Member States were consulted and the majority supported the imposition of an individual anti-dumping duty.

It is therefore proposed that the Commission approve the attached proposal to the Council to amend Council Regulation (EC) No 1950/97 imposing a definitive anti-dumping duty on imports of sacks and bags made of polyethylene or polypropylene originating, *inter alia*, in India.

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amending Regulation (EC) No 1950/97 imposing a definitive anti-dumping duty 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 Community¹, 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 1950/97², the Council imposed a definitive anti-dumping duty of 36,0% on imports of sacks and bags made of polyethylene or polypropylene (hereinafter 'product concerned') originating, *inter alia*, in India, with the exception of imports from several Indian companies specifically mentioned, which are either subject to a lesser rate of duty or to no duty at all. This Regulation was subsequently amended by Council Regulation (EC) No 96/1999³. The product is currently classifiable under 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 an application to initiate a 'new exporter' review of Regulation (EC) No 1950/97, pursuant to Article 11(4) of Council Regulation (EC) No 384/96 (the 'Basic Regulation'), from the Indian producer Subham Polymers Ltd. (hereinafter referred to as 'the company concerned'). This company claimed that it was 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, it claimed that it 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.

¹ OJ L 56, 06.03.1996, p.1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

² OJ L 276, 09.10.1997, p.1.

³ OJ L 11, 16.01.1999, p.1.

- (3) The product covered by the current review is the same product as the one under consideration in Regulation (EC) No 1950/97.
- (4) The Commission examined the evidence submitted by the Indian exporting producer 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 621/2000⁴, a review of Regulation (EC) No 1950/97 with regard to the company concerned and commenced its investigation.
- (5) By the Regulation initiating the review, 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 company concerned and directed customs authorities, pursuant to Article 14(5) of the Basic Regulation, to take appropriate steps to register such imports.
- (6) The Commission's services officially advised the company 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.
- (7) The Commission's services sent a questionnaire to the company concerned and received a reply within the deadline.
- (8) The investigation of dumping covered the period from 1 January 1998 to 31 December 1999 (the 'investigation period').
- (9) The same methodology as that used in the original investigation was applied in the current investigation.

C. Scope of the review

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

D. Results of the investigation

1. New exporter qualification

- (11) The investigation confirmed that the company concerned had not exported the product concerned during the original period of investigation and that it had begun exporting to the Community after this period.

Furthermore, according to documentary evidence submitted, the company was able to satisfactorily demonstrate that it 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.

⁴ OJ L 75, 24.03.2000, p. 45.

Accordingly, it is confirmed that the company concerned should be considered a new exporter in accordance with Article 11(4) of the Basic Regulation, and thus an individual dumping margin should be determined for it.

2. Dumping

- (12) It should be noted that the exporting producer's sales to the Community consisted of a single shipment. It was found that the quantity involved, i.e. one single container load of 15 tonnes over a period of two years, although sufficient to initiate a 'new exporter' review, did not permit a meaningful assessment of the situation of dumping as regards this exporting producer. Indeed, one shipment cannot normally be considered to represent ordinary export trading activities of a producer of sacks and bags. In fact it was established that the average quantity exported by the Indian companies involved in the original case was about 575 tonnes over a period of one year.
- (13) Moreover, the company concerned was not able to supply a satisfactory questionnaire reply with regard to both domestic sales prices and the adjustments claimed to the normal value and export price.
- (14) Nonetheless, given that the information provided demonstrated that the company concerned was indeed a 'new exporter' within the meaning of the Basic Regulation, it was concluded that the weighted average duty of the Indian companies investigated during the original anti-dumping investigation, i.e. 10.5%, would constitute the most appropriate anti-dumping duty for the company concerned. The same approach was already taken in Regulation (EC) No 1950/97 with respect to three other Indian companies which did not export the product concerned to the Community during the original investigation period, but which started exporting after this period.

E. Amendment of the measures being reviewed

- (15) Based on the findings made during the investigation, it is considered that imports into the Community of sacks and bags produced and exported by Subham Polymers Ltd. should be subject to an anti-dumping duty corresponding to the weighted average duty rate of the Indian companies investigated during the original anti-dumping investigation. It is therefore proposed that Council Regulation (EC) No 1950/97 be amended accordingly.

F. Retroactive levying of the anti-dumping duty

- (16) As the review has resulted in a determination of dumping in respect of Subham Polymers Ltd., the anti-dumping duty applicable to this company shall also be levied retroactively from the date of initiation of this review on imports which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 621/2000.

G. Disclosure and duration of the measures

- (17) The company concerned was informed of the facts and considerations on the basis of which it was intended to impose a definitive anti-dumping duty on its imports into the Community. The company objected to the proposed course of action, but did not put forward any new arguments.
- (18) This review 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

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

	<i>Rate of duty (%)</i>	<i>Taric additional code</i>
'Subham Polymers Ltd.	10.5%	8424'

2. The duty hereby imposed shall also be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Regulation (EC) No 621/2000.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day 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,

*For the Council
The President*