Council Regulation (EC) No 1353/2008 of 18 December 2008 amending Regulation (EC) No 74/2004 imposing a definitive countervailing duty on imports of cotton-type bedlinen originating in India

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community[(1)] (the 'basic Regulation'), and in particular Articles 15 and 19 thereof,

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

Whereas:

1. PROCEDURE

1.1. Previous investigation and measures in force

(1) The Council, by Regulation (EC) No 74/2004[(2)], imposed a definitive countervailing duty on imports of cotton-type bedlinen falling within CN codes ex 6302 21 00, ex 6302 22 90, ex 6302 31 00 and ex 6302 32 90 and originating in India. The rate of the duty ranges between 4,4 % and 10,4 % for individual sampled companies, with an average cooperating company rate of 7,6 % and a residual duty of 10,4 %.

1.2. Ex officio initiation of the partial interim review

(2) Following the imposition of the definitive countervailing duty the Government of India (GOI) made submissions that the circumstances with regard to two subsidy schemes (the Duty Entitlement Passbook Scheme and the Income Tax Exemption under Section 80 HHC of the Income Tax Act) had changed and that these changes were of a lasting nature. They argued that the level of subsidisation was therefore likely to have decreased and thus measures that had been established partly on these schemes should be revised.

(3) The Commission examined the evidence submitted by the GOI and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 19 of the basic Regulation. After consultation of the Advisory Committee, the Commission initiated an *ex officio* partial interim review of the measures in force by a notice published in the *Official Journal of the European Union*[(3)].

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1353/2008. (See end of Document for details)*

(4) The purpose of this partial interim review investigation is to assess the need for the continuation, removal or amendment of the existing measures in respect of those companies which benefited from one or both the allegedly changed subsidy schemes where sufficient evidence was provided in line with the relevant requirements of the notice of initiation. Depending on its findings, the investigation will also assess the need to revise the measures applicable to other companies that cooperated in the original investigation and/or the residual measure applicable for all other companies.

1.3. Review investigation period

(5) The investigation covered the period from 1 October 2006 to 30 September 2007 ('the review investigation period' or 'RIP').

1.4. Parties concerned by the investigation

(6) The Commission officially informed the Government of India (GOI) of the initiation of the partial interim review investigation, along with those Indian exporting producers who cooperated in the previous investigation and that were found to benefit from one or both of the two allegedly changed subsidy schemes and who were listed in the notice of initiation of the partial interim review, as well as the representatives of the Community industry. Interested parties had the opportunity to make their views known in writing and to request a hearing. The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

(7) In view of the apparent number of parties involved in this review, the use of sampling for the investigation of subsidisation was proposed in accordance with Article 27 of the basic Regulation.

(8) In order to enable the Commission to select a sample, pursuant to Article 27(2) of the basic Regulation, exporters and representatives acting on their behalf were requested to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic turnover, on some particular subsidy schemes, and the names and activities of all related companies. The authorities of India were also informed.

(9) More than 80 companies made themselves known and provided the information requested for the sampling. These companies represented 95 % of the total exports of India to the Community during the sampling period.

(10) Given the large number of companies, a sample of 11 exporting companies and groups with the largest export volumes to the Community was chosen, in consultation with the Community industry, the Indian textiles association Texprocil and the GOI.

(11) The sample represented 64 % of the total exports to the EU of the product concerned from India in the sampling period (1 April 2006 to 31 March 2007). In accordance with Article 27 of the basic Regulation, the selected sample covered the

largest possible representative volume of exports that could reasonably be investigated within the time available.

(12) Requests for the determination of an individual subsidy margin in accordance with Article 27(3) of the basic Regulation were submitted by four companies not selected in the sample. However, in view of the large number of requests and the large number of companies selected in the sample, it was considered that such individual examinations would be unduly burdensome within the meaning of Article 27(3) and would have prevented completion of the investigation in good time. The claims for the determination of individual margins by the four non-sampled companies were therefore rejected.

(13) During the investigation it was identified that two related companies of two sampled exporting companies did not produce, export or sell domestically the product concerned produced during the RIP. They did not express any intention to do so in the future. It has therefore been decided to exclude those related companies from the sample and calculation of individual subsidy margins.

(14) Companies not selected for the sample were informed that any anti-subsidy duty on their exports would be calculated in accordance with Article 15(3) of the basic Regulation, i.e. without exceeding the weighted average amount of countervailable subsidies established for the companies in the sample.

(15) The companies that did not make themselves known within the deadline set in the notice of initiation were not considered as interested parties.

(16) Questionnaire replies were received from all sampled exporting producers in India.

(17) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of the following interested parties:

Government of India (GOI)

— Ministry of Commerce, New Delhi

Exporting producers in India

— Anunay Fab. Limited, Ahmedabad

— Brijmohan Purusottamdas, Mumbai and Incotex Impex Pvt Limited, Mumbai

— Divya Global Pvt Ltd, Mumbai

— Intex Exports, Pattex Exports and Sunny Made-ups, Mumbai

— Jindal Worldwide Ltd, Progressive Enterprise and Texcellence Overseas, Ahmedabad and Mumbai

— Madhu Industries Limited and Madhu International, Ahmedabad

— Mahalaxmi Exports and Mahalaxmi Fabric Mills Pvt Ltd, Ahmedabad

— Prakash Cotton Mills Pvt, Ltd, Mumbai

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— Prem Textiles, Indore

— The Bombay Dyeing and Manufacturing Co. Ltd, N W Exports Limited and Nowrosjee Wadia & Sons Limited, Mumbai

— Vigneshwara Exports Limited, Mumbai

1.5. Disclosure and comments on procedure

(18) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose to amend the duty rates applicable and continue application of existing measures. They were also given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

2. PRODUCT CONCERNED

(19) The product under review is bedlinen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed, originating in India (the product concerned), currently classifiable within CN codes ex 6302 21 00, ex 6302 22 90, ex 6302 31 00 and ex 6302 32 90, and as defined in the original investigation.

3. SUBSIDIES

3.1. Introduction

(20) On the basis of the information available and the replies to the Commission's questionnaire, the following schemes allegedly granting subsidies were investigated:

Subsidy schemes investigated in the original investigation:

1. Duty Entitlement Passbook (DEPB) scheme

2. Duty Free Replenishment Certificate (DFRC) scheme/Duty Free Imports Authorisation (DFIA) scheme

3. Export Promotion Capital Goods (EPCG) scheme

4. Advance Licence Scheme (ALS)/Advance Authorisation Scheme (AAS)

5. Export Processing Zones/Export Oriented Units (EPZs/EOUs)

6. Income Tax Exemptions scheme (ITES)

Subsidy schemes not investigated in the original investigation:

7. Duty Drawback Scheme (DDS)

8. Technology Upgradation Fund Scheme (TUFS)

9. Export Credit Scheme (pre-shipment and post-shipment) (ECS)

(21) The schemes 1 to 5 above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992

(Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case; i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 (EXIM policy 04-09). In addition, the GOI also sets out the procedures governing the EXIM policy 04-09 in a 'Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I' (HOP I 04-09). The Handbook of Procedures is also updated on a regular basis.

(22) The Income Tax Exemptions Scheme is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

(23) The Duty Drawback Scheme is based on Section 75 of the Customs Act 1962, Section 37(2)(xvi) of the Excise Act 1944 and Sections 93A and 94 of the Finance Act 1994. This is a new scheme that has not been previously investigated.

(24) The Technology Upgradation Fund Scheme is based on a Resolution of the Ministry of Textiles, Government of India, published in the Official Gazette of India Extraordinary Part I Section I on 31 March 1999. This is a new scheme that has not been previously investigated.

(25) The Export Credit Scheme is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

(26) In accordance with Article 11(10) of the basic Regulation, the Commission invited the GOI for additional consultations with respect to changed and unchanged schemes, as well as those not previously investigated, with the aim of clarifying the factual situation as regards the alleged schemes and arriving at a mutually agreed solution. Following these consultations, and in the absence of a mutually agreed solution in relation to these schemes, the Commission included all of them in the investigation of subsidisation.

3.2. Specific schemes

3.2.1. Duty Entitlement Passbook (DEPB) scheme

3.2.1.1. Legal basis

(27) The detailed description of the DEPB scheme is contained in paragraph 4.3 of the EXIM policy 04-09 and in chapter 4 of the HOP I 04-09.

3.2.1.2. Eligibility

(28) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

3.2.1.3. Practical implementation

(29) An eligible exporter can apply for DEPB credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPB rates have