Council Regulation (EC) No 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan

COUNCIL REGULATION (EC) No 397/2004

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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 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] ('basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. Initiation

(1) On 18 December 2002 the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Communities* the initiation of an anti-dumping proceeding with regard to imports into the Community of bed linen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed ('cotton-type bed linen' or 'bed linen') originating in Pakistan[(2)].

(2) The proceeding was initiated following a complaint lodged in November 2002 by the Committee of the Cotton and Allied Textile Industries of the European Communities ('Eurocoton' or 'the complainant') on behalf of producers representing a major proportion of the total Community production of cotton-type bed linen. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

(3) The Commission officially advised the exporting producers and importers known to be concerned as well as their associations, the representatives of the exporting country concerned, the complainant Community producers, known associations of producers, as well as known users, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limits set in the notice of initiation.

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(4) A number of exporting producers in the country concerned, as well as Community producers, Community users and importers made their views known in writing. All parties who so requested within the above time limits and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

(5) It was submitted that more than 45 days have lapsed between the lodging date and the initiation date. Pursuant to the Article 5(1) of the basic Regulation, a complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission. The issuing of the acknowledgement of receipt took place on Thursday, 31 October 2002. Considering that Friday, 1 November was a public holiday, the first working day following the issuing of the acknowledgement of receipt by the Commission was Monday, 4 November 2002. Therefore, 4 November 2002 must be considered as the lodging date of the complaint.

(6) The notice of initiation has been published on 18 December 2002, which is clearly within 45 days of the lodging of the complaint. Consequently, the notice of initiation was published within the deadline specified in Article 5(9) of the basic Regulation.

2. Sampling

Exporters/producers

(7) In view of the large number of exporting producers involved in this proceeding, the Commission decided that it could be necessary to apply sampling techniques in accordance with Article 17 of the basic Regulation.

(8) In order to allow for the selection of a sample, exporting producers were requested to make themselves known within 15 days of the initiation of the proceeding and to provide basic information for the selection of the sample.

(9) A total of 178 companies provided the requested information, but only 156 companies reported production and sales of the product concerned to the Community during the period between 1 October 2001 and 30 September 2002 (‘investigation period’ or ‘IP’) and expressed a wish to participate in the sample. These were initially considered as cooperating companies.

(10) As none of these companies reported representative domestic sales of the like product, which could be used to determine normal value in accordance with Article 2(1), (3) or (6) of the basic Regulation, the Commission invited the Pakistani authorities to contact any known producers of bed linen with domestic sales to grant them an additional opportunity to submit information on those sales within a new time limit. However, no replies showing companies with representative domestic sales were received.

(11) According to Article 17(1) of the basic Regulation, the Commission has selected a sample based on the largest representative volume of exports, which could

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reasonably be investigated within the time available, in consultation with the exporting producers, the national authorities and known associations of producers/exporters. The Commission initially proposed to select a sample of five companies representing 29,5 % of Pakistan's exports to the Community and informed the Pakistani authorities and the associations of producers/exporters accordingly. The national authorities of Pakistan, the legal representative of some of the companies and one association of exporters proposed to replace certain of the companies proposed by others, arguing that this would ensure a larger coverage, a better geographical spread and include companies selected for the sample in a previous anti-dumping proceeding. The concerns of these parties were met to the extent that they were in line with the criteria of Article 17(1) of the basic Regulation, i.e. the provision that a sample should cover the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. In the light of this, the sample was extended by including the sixth biggest Pakistani exporter.

(12) The six selected companies, which represented more than 32 % of Pakistan's volume of exports of bed linen to the Community during the IP, were requested to submit a reply to the anti-dumping questionnaire as determined by the notice of initiation.

(13) Requests for individual examination have been submitted by three companies not selected in the sample. In view of the size of the sample and the complexity of the case (such as the large number of product types), the Commission informed the companies concerned that a final decision on individual examination would only be taken after the verification visits of the companies selected in the sample had taken place and due regard being given to the time available. For the reasons explained in recital 35 below, the necessary conditions to carry-out on-spot investigations in Pakistan were not met and, therefore, it was not possible to accept any request for individual examination. Community producers

(14) In view of the large number of Community producers supporting the complaint, and in conformity with Article 17 of the basic Regulation, the Commission announced in the notice of initiation of the proceeding its intention to select a sample of Community producers based on the largest representative volume of production and sales of the Community industry which could be reasonably investigated within the time available. For these purposes, the Commission requested companies to provide information concerning production and sales for the product concerned.

(15) On the basis of the replies received, the Commission selected five companies in three Member States. In the selection, the production and sales volume were considered aiming at covering the most representative market size.

(16) The Commission sent questionnaires to the sampled companies. Two out of these five companies were not able to submit a complete list of all transactions to unrelated customers during the investigation period and were therefore considered to be only partially cooperating.

3. Investigation

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(17) Questionnaire replies were received from the five sampled complainant Community producers, from the six sampled exporting producers in Pakistan, three exporting producers requesting individual examination and two unrelated importers in the Community.

(18) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of dumping, injury, causality and Community interest. Verification visits were carried out at the premises of the following companies:

Community producers:

— Bierbaum Unternehmensgruppe GmbH & Co.KG, Germany,

— Descamps S.A., France,

— Gabel Industria Tessile S.p.A., Italy,

— Vanderschooten S.A., France,

— Vincenzo Zucchi S.p.A., Italy;

Unrelated importers in the Community:

— Blanche Porte S.A., France,

— Richard Haworth, United Kingdom;

Exporters/producers in Pakistan:

— Gul Ahmed Textile Mills Ltd, Karachi,

— Al-Abid Silk Mills, Karachi (partial verification).

(19) The investigation period for dumping and injury covered the period from 1 October 2001 to 30 September 2002. The examination of trends relevant for the assessment of injury covered the period from 1999 to the end of the IP ('period considered').

(20) Given the need to further examine certain aspects of dumping, injury, causality and Community interest, no provisional anti-dumping measures were imposed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(21) The product concerned is bed linen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed originating in Pakistan, currently classifiable within CN codes ex 6302 21 00 (TARIC codes 6302 21 00 81, 6302 21 00 89), ex 6302 22 90 (TARIC code 6302 22 90 19), ex 6302 31 10 (TARIC code 6302 31 10 90), ex 6302 31 90 (TARIC code 6302 31 90 90) and ex 6302 32 90 (TARIC code 6302 32 90 19). Bed linen includes bed sheets (fitted or flat), duvet covers and pillow covers, packaged for sale either separately or in sets.

(22) The fabrics made of cotton-type fibres used to produce bed linen are identified by two pairs of numbers. The first one indicates the count (or weight) of yarns employed respectively for the warp and for the weft. The second one indicates the number of threads per centimetre or per inch respectively of the warp and of the weft.

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(23) The fabrics are bleached, dyed or printed. Then they are cut and stitched into different size flat sheets, fitted sheets, duvet covers and pillow cases. The final product is packed for sale either separately or in sets.

(24) It was claimed that bleached bed linen sold to institutions should be excluded from the scope of the investigation on the grounds that it should not be treated as a product concerned. It was submitted that bleached bed linen (i) is technically different from printed and/or dyed bed linen; (ii) is not substitutable by Community production which is based on printed and/or dyed bed linen; and (iii) has different end users (hospitals and hotels).

(25) The investigation revealed that although there are different processes for finishing the fabrics (bleaching, dyeing, printing), products of all finishes are substitutable and compete on the Community market. Furthermore, it was found that there is production of bleached bed linen in the Community and that this type of the product concerned is not used exclusively by any particular category of users.

(26) Notwithstanding the different possible product types due to different weaving construction, finish of the fabric, presentation and size, packing, etc., all of them constitute one product for the purpose of this proceeding because they have the same physical characteristics and essentially the same use.

2. Like product

(27) It was examined whether cotton-type bed linen produced by the Community industry and sold on the Community market, as well as cotton-type bed linen produced in Pakistan and sold on the Community market and on the domestic market were alike to the product concerned.

(28) The investigation revealed that although there are different processes in finishing the fabrics (bleaching, dying, printing), products of all finishes share the same physical characteristics and essentially the same use.

(29) It was therefore concluded that although there were in some instances differences between product types produced in the Community and those sold for export to the Community, there were no differences in the basic characteristics and uses of the different product types and qualities of bed linen of cotton-type fibres. Therefore, the product manufactured and sold in the domestic market of Pakistan and the one exported to the Community from Pakistan as well as the product manufactured and sold in the Community by the Community producers are considered as like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

Pre-verification analysis of the information submitted by the sampled exporters

(30) All six companies selected to be part of the sample have replied to the questionnaire. The pre-verification analysis of the replies submitted by these exporting producers showed that all of the selected exporting producers reported underestimated costs which resulted in unrealistic and abnormally high profits for sales of the product