COUNCIL REGULATION (EC) No 696/2002

of 22 April 2002

confirming the definitive anti-dumping duty imposed on imports of cotton-type bed linen originating in India by Regulation (EC) No 2398/97, as amended and suspended by Council Regulation (EC) No 1644/2001

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

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'),

Having regard to the proposal made by the Commission after consultation of the Advisory Committee,

Whereas:

A. EXISTING MEASURES

(1) The Council, by Regulation (EC) No 2398/97 [2] imposed a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan ('definitive Regulation'). The definitive Regulation was preceded by Commission Regulation (EC) No 1069/97 [3] imposing a provisional anti-dumping duty on imports of bed linen originating in Egypt, India and Pakistan ('provisional Regulation').

On 12 March 2001, the Dispute Settlement Body of the World Trade Organisation ('WTO') adopted an Appellate Body report and a panel report as modified by the Appellate Body report on the case 'European Communities — anti-dumping duties on imports of cotton-type bed linen from India' ('reports') [4].

It is recalled that, following the adoption of these reports, the definitive Regulation was amended by Council Regulation (EC) No 1644/2001 [5], imposing a definitive anti-dumping duty on imports of bed linen originating in Egypt, India and Pakistan and suspending its application with regard to imports originating in India. The definitive Regulation was last amended by Council Regulation (EC) No 160/2002 [6], which suspended the application of the anti-dumping duty with regard to imports originating in Egypt and terminated the proceeding with regard to Pakistan. In accordance with Article 1(2) of Council Regulation (EC) No 160/2002, the anti-dumping duty on imports of bed linen originating in Egypt subsequently expired on 28 February 2002 since no review request was received by the Commission within the deadlines foreseen in that Regulation.

B. REASSESSMENT OF FINDINGS

1. Preliminary remark

(2) Further to a duly documented request submitted by the Committee of the Cotton and allied textile Industries of the European Communities (Eurocoton), the complainant in the original investigation, the Commission initiated a review concerning dumping only, in accordance with Article 11(3) of the basic Regulation. The notice of initiation was published on 13 February 2002 [7] and the application of the anti-dumping duty remains suspended pending the outcome of the review investigation pursuant to Article 2(2) of Regulation (EC) No 1644/2001.

[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 332, 4.12.1997, p. 1.
[3] OJ L 156, 13.6.1997, p. 11.
[4] Document WT/DS141/9of22 March 2001.
[5] OJ L 219, 14.8.2001, p. 1.
[6] OJ L 26, 30.1.2002, p. 1.
[7] OJ C 39, 13.2.2002, p. 17.

(3) In view of the fact that the proceeding has been terminated with regard to imports originating in Pakistan and that measures concerning imports originating in Egypt expired on 28 February 2002, it is now considered appropriate to reassess the findings. The reassessment is limited to the determination of injury and causal link to the extent that this determination was previously based on an examination of the joint impact of imports from India, Egypt and Pakistan.

(4) It is recalled that the investigation of dumping covered the period from 1 July 1995 to 30 June 1996 ('IP'). The investigation relating to the parameters relevant in the context of injury covered the period from 1 January 1992 up to the end of the IP (30 June 1996). This period will be referred to as 'the period considered'.

2. **Injury**

2.1. *Volume, market share and prices of the imports from India*

(5) The table shows how imports from India, taken in isolation, developed during the period considered.

India	1992	1993	1994	1995	IP
Volume (tonnes)	11 845	12 424	13 113	17 998	18 428
Index	100	105	111	152	156
Market share	5,9 %	6,4 %	6,8 %	9,5 %	9,9 %
ECU/kg	5,53	6,05	6,57	5,10	4,94
Eurostat					
Index	100				
Index 1993 to the IP		106	119	92	89
Index 1994 to the IP		100	109	84	82
			100	78	75

(6) Imports from India taken in isolation increased from 11 845 tonnes in 1992 to 18 428 tonnes during the IP, i.e. an increase of 56 % or of 6 583 tonnes during the period considered.

(7) If the imports from exporters found not to have dumped are excluded, the increase in volume of dumped imports from India remains significant. In the case of such exclusion, the dumped imports rose from 10 232 tonnes in 1992 to 15 816 tonnes during the IP, namely an increase of 55 % or 5 584 tonnes. Their market share had increased by 66 % during the period considered and still represented 8,5 % of the Community market during the IP.

(8) It is worth noting that imports from India grew most in the period from 1994 to the IP (+ 5 315 tonnes and + 3,1 percentage points market share growth; 5 058 tonnes and + 2,9 percentage points market share growth if the imports from Indian exporters found not to have dumped are excluded). This development of dumped imports coincided with a fall in consumption by 4 % or by 7 849 tonnes on the Community market.

(9) Furthermore, the above table shows that prices of Indian bed linen had significantly decreased during the period considered. For instance, average prices decreased by 18 % in the period from 1993 to the IP and by 25 % between 1994 and the IP. The trends in sales prices are not significantly different if the imports from the Indian exporters found not to have dumped are excluded.

(10) During the IP, the level of undercutting of the dumped imports originating in India ranged from 13,8 % to 40,8 %, expressed as percentages of the adjusted average prices of the Community industry. Undercutting also remains significant if imports from the exporters found not to have dumped are excluded (see recital 24 of Regulation (EC) No 1644/2001). The weighted average undercutting margin is around 19 %.

2.2. *Situation of the Community industry*

(11) It is recalled that the situation of the Community industry was analysed in recitals 81 to 91 of the provisional Regulation as well as recitals 40 and 41 the definitive Regulation. As shown in recitals 25 to 47 of Regulation (EC) No 1644/2001 all factors listed in Article 3(5) of the basic Regulation were analysed.

2.2.1. Growth

(12) The growth of the Community industry was particularly negative between 1994 and the IP in terms of sales volume (– 1 173 tonnes). The growth in market share was very limited in the same period (+ 0,2 percentage points) and was even negative between 1995 and the IP. At the same time, the growth of market share of low-priced imports from India remained always positive and was significant. Between 1994 and the IP, Indian imports increased by 40,5 % or 5 315 tonnes (47 % or 5 058 tonnes if imports from the Indian exporting producers found not to have dumped are excluded) and the growth in market share was as high as 3,1 percentage points (2,9 percentage points) during the same period.

2.2.2. Factors affecting Community prices

(13) When evaluating factors affecting domestic prices the analysis focussed primarily on the contraction of demand and raw cotton prices.

(14) The investigation clearly showed that the gap left by Community factory closures and the fall in imports from certain other third countries during the period considered was filled to an appreciated extent by imports from India, of which most were found to be dumped. Given that the prices of the dumped imports from India were amongst the lowest of all the operators selling bed linen on the Community market, it is concluded that the contraction of demand in itself did not have an overriding impact on prices, notably those of the Community industry.

(15) The price of raw cotton, which can represent up to 15 % of the total cost of bed linen, increased significantly during the period considered. Normally, in fair market conditions, producers should have been able to pass on this cost increase to customers. The investigation has shown that the Community industry was not able to do so in this case.

(16) It is also noted that as described in recitals 9 and 10 above the investigation also established that prices of the imports concerned decreased considerably and that there was significant price undercutting by Indian exporting producers. Indian prices declined by up to 18 % and undercutting margins ranging from 13,8 % to 40,8 % were found to exist.

(17) Furthermore, between 1994 and the IP, the volume of imports from India increased the most: 5 315 tonnes (5 058 tonnes excluding the imports which were not made at dumped prices) and 3,1 percentage points growth in market share (2,9 percentage points). These imports represented 34 % of the Community industry's sales volume in 1994 and over 50 % during the IP.

2.2.3. Magnitude of the actual margin of dumping

(18) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports originating in India, this impact cannot be considered as negligible. Indeed, as outlined in recital 8 above, Indian imports increased significantly in absolute and in relative terms. They represented 33 % of the Community industry's sales volume in 1992 and over 50 % during the IP (respectively 28 % and 43 % if the imports from Indian exporters found not to have dumped are excluded).

(19) The Association of Indian Exporters argued that where the dumping margins are much lower than the undercutting or underselling margins, the injury suffered by the Community industry must be due to other factors. Whilst it is noted that individual dumping margins and the weighted average dumping margin found for India are lower than the undercutting margins. However, the dumping margins found are still distinctly above de minimis levels. Indeed, at least one third of the undercutting would have disappeared if the imports from India had not been dumped and this would have made products from India clearly less attractive.

2.3. *Conclusion on injury*

(20) It follows from the reassessment carried out above that imports from India increased by 56 % or by 6 583 tonnes from 1992 to the IP, and their market share by 67 % (55 % or by 5 584 tonnes excluding the imports which were not made at dumped prices). If only dumped imports are taken into consideration, they increased by 3,4 percentage points in terms of market share and represented 8,5 % of the Community market during the IP. The increase in absolute and relative terms therefore remains significant, even if the imports from Indian exporters found not to have dumped are excluded. Moreover, average prices of Indian bed linen declined by up to 18 % during the period considered and undercutting by dumped imports was established on average at 19 % during the IP.

(21) Based on the above, it is concluded that the Community has suffered material injury.

3. **Causation**

3.1. *Introduction*

(22) Based on the above findings, the causal link analysis set out in recitals 54 to 58 of Regulation (EC) No 1644/2000 as well as in recitals 100 and 101 of the provisional Regulation should likewise be reassessed.

3.2. *Effect of the dumped imports from India*

(23) As shown in recitals 5 to 8 above, imports from India significantly increased by 6 583 tonnes in absolute terms and by 56 % in percentage terms (if the imports from the Indian exporters found not to be dumping are excluded, the volume increase would be 5 584 tonnes, meaning a percentage terms increase of 55 %). The market share held by these imports increased during the period considered from 5,9 % to 9,9 %, namely by 4,0 percentage points (5,1 % to 8,5 %, namely 3,4 percentage points if the imports from the Indian exporting producers found not to have dumped are excluded). During the IP, the weighted average undercutting margin (excluding the imports from the non-dumping Indian exporters) was established at around 19 %.

(24) During the period considered sales by the Community industry slightly increased by 348 tonnes and the Community industry's market share increased from 18,1 % to 19,7 %, namely by 1,6 percentage points. This has to be seen in the light of the fact that the Community industry managed to shift production and sales to higher value added products in order to maintain production and sales levels. Overall, this led to cost increases not covered by price increases. Indeed, the investigation showed that the Community industry's weighted average sales price remained by and large stable.

(25) It is also recalled that the market for bed linen is characterised by transparency and a certain product substitutability (recital 97 of the provisional Regulation). Large Community purchasers of bed linen, whose orders can ensure a high level of production capacity utilisation and therefore some economy of scale, are very sensitive to prices. On this basis, it can be concluded that the low prices of the Indian exporting, producers concerned, which were of the lowest available on the Community market, coupled with their substantial and increasing market share, have exercised continuous downward pressure on the prices on the Community market.

(26) As stated in recital 17 above it should further be noted that during the period from 1994 to the IP the volume of imports from India increased the most, namely by 41 % or by 5 315 tonnes (47 % or 5 058 tonnes if the imports from the Indian exporting producers found not to have dumped are excluded). During that period, the market share of Indian imports increased by 3,1 percentage points (2,9 percentage points). It is recalled that the investigation showed that it was during that period that the financial situation of the Community industry deteriorated the most: in particular, profit fell by 1,4 percentage points and the return on investments by 7 percentage points.

As stated in recital 99 of the provisional Regulation, price suppression and consequent decreasing profitability (and the corresponding development of cash flow and return on investment) were the main indicators to conclude that the Community industry suffered material injury. In view of the coincidence in time between the significant increase in the low-priced dumped imports originating in India and the deterioration of the financial situation of the Community industry, it is confirmed that there was a direct link between these imports and the material injury found.

3.3. *Effects of other factors*

3.3.1. Preliminary remarks

(27) It should be recalled that the analysis set out in Regulation (EC) No 1644/2001 of the effects of factors other than dumped imports on the state of the Community industry confirmed the causal link between dumped imports originating in India, Egypt and Pakistan and the material injury found (recital 69 of Regulation (EC) 1644/2001). This analysis included an analysis of imports from other third countries not subject to measures, which obviously did not cover imports from Egypt and Pakistan. Given the termination of the proceeding with regard to imports originating in Pakistan (recital 13 of Regulation (EC) No 160/2002) and the expiry of the measures with regard to Egypt, the reassessment of the effect of imports of bed linen from other third countries covers all imports other than Indian including those from Egypt and Pakistan.

(28) In addition, it is important to ensure that the injurious effects of imports from third countries not concerned, including those from Egypt and Pakistan, are not attributed to Indian imports taken in isolation. Therefore, a separate assessment and a distinction between the injurious effects of those imports were carried out.

(29) From the outset, the nature of the injury suffered by the Community industry, namely price suppression and declining and inadequate profitability which caused financial losses, should be underlined.