Council Regulation (EC) No 74/2004 of 13 January 2004 imposing a definitive countervailing duty on imports of cotton-type bedlinen originating in India

COUNCIL REGULATION (EC) No 74/2004

of 13 January 2004

imposing a definitive countervailing duty on imports of cotton-type bedlinen originating in India

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)], and in particular Article 15 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-subsidy proceeding with regard to imports into the Community of bedlinen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed (cotton-type bedlinen) originating in India[(2)] and commenced an investigation.

(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 more than 25 % of the total Community production of cotton-type bedlinen. The complaint contained prima facie evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-subsidy proceeding.

(3) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 (the basic Regulation), the Commission notified the Government of India (GOI) that it had received a properly documented complaint alleging that subsidised imports of cotton-type bedlinen originating in India were causing material injury to the Community industry. The GOI was invited for consultation with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with the GOI were

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 74/2004. (See end of Document for details)*

subsequently held with the Commission at its offices in Brussels, where no conclusive evidence was provided by the GOI which could refute the allegations made in the complaint. However, due note was taken of comments made by the GOI with regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

(4) 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 and the other 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.

(5) It was submitted that more than 45 days had lapsed between the lodging date and the initiation date. Pursuant to Article 10(13) 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 is to be considered as the lodging date of the complaint. The notice of initiation was 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 of Article 10(13) of the basic Regulation.

2. Sampling

SAMPLING OF EXPORTERS/PRODUCERS IN INDIA

General

(6) In view of the large number of exporters in India, the Commission decided to apply sampling techniques in accordance with Article 27 of the basic Regulation.

(7) 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 contacted in this context by the Commission.

Preselection of the sample

(8) More than 80 companies identified themselves, provided the requested information within the three-week period and had exported the product concerned to the Community during the investigation period. They were considered as cooperating companies and were taken into account in the selection of the sample. These companies represented more than 90 % of the total exports of India to the Community.

(9) The companies not finally retained in 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.

(10) The companies which did not make themselves known within the deadline set in the notice of initiation were considered as non-cooperating companies.

Selection of the sample

(11) According to Article 27(1) of the basic Regulation, the selection was based on the largest representative volume of exports that could reasonably be investigated within the time available. On this basis eight exporting producers (plus three related companies) were chosen to constitute the sample, in consultation with the representatives of the companies, of the professional association of exporters (Texprocil) and of the GOI. This sample represented 55 % of Indian exports of the product concerned to the Community.

(12) Those companies selected in the sample which fully cooperated during the investigation were attributed their own subsidy margin and individual duty rate.

Individual examination of the companies not selected in the sample

(13) Twenty-one cooperating companies not selected in the sample requested the calculation of individual margins of subsidy. In accordance with Article 27(3) of the basic Regulation, their requests could not be accepted in the current investigation since the number of exporters was so large that individual examinations would have been unduly burdensome and prevented completion of the investigation in good time. The 21 companies in question were informed of this fact accordingly.

SAMPLING OF COMMUNITY PRODUCERS

(14) In view of the large number of Community producers supporting the complaint, and in accordance with Article 27 of the basic Regulation, the Commission announced in the notice of initiation 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 like product.

(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) Two out of these five companies, which were among the smaller ones, 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

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 74/2004. (See end of Document for details)*

(17) 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 set time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

(18) Questionnaire replies were received from the five sampled complainant Community producers, from a representative sample of eight exporting producers (plus three related companies) in India and one unrelated importer in the Community.

(19) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of subsidy, 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 SA, France;

— Gabel industria tessile SpA, Italy;

— Vanderschooten SA, France;

— Vincenzo Zucchi SpA, Italy;

Unrelated importers in the Community:

— Richard Haworth, United Kingdom;

Exporters/producers in India:

— The Bombay Dyeing and Manufacturing Co., Mumbai

— Brijmohan Purusottamdas, Mumbai

— Divya Textiles, Mumbai

— Jindal Worldwide Ltd, Ahmedabad (related to Texcellence Overseas)

— Mahalaxmi Exports, Ahmedabad

— Nowrosjee Wadia & Sons, Mumbai (related to The Bombay Dyeing and Manufacturing Co.)

— N. W. Exports Limited, Mumbai (related to The Bombay Dyeing and Manufacturing Co.)

— Pasupati Fabrics, New Delhi

— Prakash Cotton Mills Pvt., Ltd, Mumbai

— Texcellence Overseas, Mumbai

— Vigneshwara Exports Limited, Mumbai

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

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 74/2004. (See end of Document for details)*

(21) Given the need to examine further certain aspects of subsidy, injury, causality and Community interest, no provisional anti-subsidy measures were imposed on cotton-type bedlinen originating in India.

B. Product concerned and Like Product

1. Product concerned

(22) The product concerned 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, 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). Bedlinen includes bed sheets (fitted or flat), duvet covers and pillow covers, packaged for sale either separately or in sets. All product types are similar in their essential physical characteristics and in their uses. They are therefore considered to be one product.

2. Like product

(23) The product manufactured and sold in the domestic market of India and that exported to the Community from India as well as the product manufactured and sold in the Community by the Community producers were found to have basically the same physical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(5) of the basic Regulation.

C. SUBSIDISATION

1. Introduction

(24) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following six schemes, which allegedly involve the granting of export subsidies, were investigated:

(i) Duty Entitlement Passbook (DEPB) scheme

(ii) Duty-Free Replenishment Certificate (DFRC)

(iii) Export Promotion Capital Goods (EPCG) scheme

(iv) Advance Licence Scheme (ALS)

(v) Export Processing Zones/Export Oriented Units (EPZs/EOUs)

(vi) Income Tax Exemption (ITES).

(25) The schemes (i), (ii), (iii), (iv) and (v) specified in recital 24 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 the ‘Export and Import Policy’ documents, which are issued by the