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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2398/97

of 28 November 1997

imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan

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], and in particular Articles 9 (4) and 10 (2) thereof,

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

Whereas:

A. PROCEDURE

(1) By Regulation (EC) No 1069/97 [2] (hereinafter referred to as 'the provisional Regulation') the Commission imposed a provisional anti-dumping duty on imports into the Community of cotton-type bed linen falling within CN codes 6302 21 00, 6302 22 90, 6302 31 10, 6302 31 90 and 6302 32 90 originating in Egypt, India and Pakistan.

(2) Following the imposition of the provisional anti-dumping duty, certain interested parties submitted comments in writing. Those parties, who so requested, were granted an opportunity to be heard by the Commission. Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection, at the level of these duties, of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(3) The oral and written comments submitted by the interested parties were analysed and, where deemed appropriate, taken into account for the definitive findings.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Requests for exclusion from the proceeding

(4) Following the disclosure of provisional findings, the Commission received various requests for exclusion of certain product types from the proceeding:

— certain parties repeated their request for exclusion of 'seersucker', a type of bed linen produced with the use of chemicals, claiming there to be no more production of such items in the Community,

— some parties repeated the request for exclusion of bleached bed linen which is intended for institutional use (i.e. hospitals, hotels etc.). Moreover, one party argued for the exclusion of institutional dyed bed linen. In support of their requests, they claimed that the user institutions require a special quality of the product in question, namely products made from fabric of a particularly heavy weaving construction, which they claimed were not produced in the Community,

— a request was also received to exclude items made from fabric woven on looms operated purely by hand or foot ('handloom').

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 156, 13. 6. 1997, p. 11.

(5) On 'seersucker', since no new arguments were advanced in support of the request following the imposition of provisional measures, and despite the absence of production of identical products by the Community industry, the request could not be accepted. It was therefore concluded that this product type is subject to the proceeding as it shares sufficient physical characteristics and uses with other types of bed linen to make them competitive with each other.

(6) On the request to exclude certain types of bed linen intended for institutional use, and in particular to exclude products of a weaving construction above a certain weight threshold, it was found that bed linen of a heavier construction was produced in the Community (notably but not exclusively a specific type known as flannel). In addition, no clear dividing line could be established between bed linen produced and sold in the Community for institutional and private use and the imported types: all shared sufficient physical characteristics, functions and uses to be considered like products.

The request to exclude bed linen for institutional use from the scope of the proceeding could not therefore be accepted and the findings of the investigation and the conclusions of the Commission as set out in recital 13 of the provisional Regulation are confirmed.

(7) As regards the request to exclude handloom products, while the use of different production methods is not in itself a reason relevant to the definition of the like product, it was found that handloom items had physical characteristics different from those of other bed linen, notably through a less regular and looser weave. This difference led to a different consumer perception of handloom products which was reinforced by the fact that handloom products are often sold through particular sales channels such as charity shops which are not available to Community producers.

Consequently it was concluded that handloom products should be excluded from the scope of the proceeding and, therefore, these products should be exempted from the payment of the duties if accompanied by a certificate of handloom origin (see Annex II to this Regulation) issued by the appropriate authorities of the exporting country.

2. Like product

(8) Following the disclosure of provisional findings, certain parties repeated the claim, already made at the provisional stage, that there were such differences between all imported bed linen and all Community-produced bed linen that they could not be considered a like product within the meaning of Article 1 (4) of Council Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation'). The Commission considered these claims but found that for the reasons already set out in recital 14 of the provisional Regulation they could not be accepted.

3. Conclusion

(9) It follows from the conclusions set out in recital 10 of the provisional Regulation as modified above with regard to handloom products that the product under consideration is bed linen of cotton fibres, pure or mixed with man-made fibres or flax, bleached, dyed or printed. It includes but is not limited to bed sheets, duvet covers and pillow cases.

Bed linen of pure man-made fibres and bed linen where flax is the dominant fibre is not covered by this proceeding. Bed linen made from handloom woven fabric is also not covered by this proceeding.

Based on the above exclusion and clarifications of the product scope, bed linen covered by the present proceeding falls within CN codes ex 6302 21 00, ex 6302 22 90, ex 6302 31 10, ex 6302 31 90 and ex 6302 32 90.

Subject to the above, and in the absence of any further arguments, the conclusions as set out in recitals 10 and 14 of the provisional Regulation concerning the product definition and the like product are hereby confirmed.

C. EXPORTING PRODUCERS IN THE COUNTRIES CONCERNED

1. Requests for status of cooperating parties

(10) It was only after the selection of the samples of exporters and, in many cases, following the disclosure of the preliminary findings of the investigation to cooperating parties, that several exporting producers in the countries concerned made themselves known and requested the status of cooperating parties.

(11) Given that all these exporting producers either did not make themselves known or did not provide the information deemed necessary for the investigation within the time limits set in the notice of initiation (1), it is considered that the cooperating status requested should not be granted because to do otherwise would constitute a discrimination against other parties who had decided to cooperate since the outset of the investigation.

2. New exporters

(12) Following the adoption of provisional measures, a number of exporters in the countries concerned made themselves known, often at a very advanced stage of the investigation, and requested new exporter status. Some of them showed to the satisfaction of the Commission that they did not export the product concerned to the Community during the investigation period, that they started to export to the Community after this period or that they have entered into an irrevocable contractual obligation to export a significant quantity to the Community, and that they were not related to any of the exporting producers in the respective exporting countries which are subject to the anti-dumping measures on the product concerned. Consequently, those exporting producers were considered to be new exporters and should be granted the same treatment, in terms of definitive measures, as the cooperating exporting producers not included in the sample, i.e. an anti-dumping duty calculated in accordance with Article 9 (6) of the basic Regulation.

(13) The same treatment should be granted to any new exporting producer which following the adoption of definitive measures shows to the satisfaction of the Commission that it fulfils the abovementioned criteria.

D. DUMPING

1. Normal value

(a) *Methodology for the construction of normal value*

(14) Three Egyptian exporting producers argued that if domestic sales were considered unrepresentative for assessing profit, they should be considered equally unrepresentative for assessing selling, general and administrative (SG&A) expenses.

In this respect, it should be noted that the fact that some or all of the domestic sales of the like product appear to be loss-making does not in itself render the related SG&A expenses inappropriate to construct normal value if such sales were made in sufficient quantities when compared to the sales volume of the product under consideration sold for export to the Community.

(b) *Cost of production*

(15) As already explained in recital 36 of the provisional Regulation, two Pakistani exporting producers claimed that due to exceptional circumstances, resulting from civil disorder on a major scale in Karachi during the investigation period, costs corresponding to 'idle capacity' should not be taken into account in constructing normal value. Following the imposition of provisional measures these companies repeated their claim and resubmitted their quantification of the idle costs concerned.

In this respect, it should be noted that according to an extract of the International Accounting Standard No 2 (IAS-2), which one of the companies concerned quoted, although the amount of fixed overheads allocated to each unit of production is not to be increased as a consequence of low production or idle plant, unallocated overheads are in any event recognised as an expense in the period in which they are incurred. In other words, all costs incurred within a certain period should be fully absorbed within the same period by the total cost of production (manufacturing cost and SG&A expenses) irrespective of whether 'idle capacity' costs are classified as fixed overheads included in the manufacturing cost or as part of the SG&A expenses. Therefore, these claims could not be accepted since the total cost of production incorporated in the constructed normal value includes both manufacturing cost and SG&A expenses.

(16) One Pakistani exporting producer claimed that the cost of initial material (grey cloth) it had reported in the cost of manufacturing included certain SG&A expenses. Therefore, when constructing its normal value, the SG&A expenses reported should have been deducted from the cost of production in order to avoid a double counting of SG&A expenses. The Commission, after reviewing the data of the company, accepted the claim and modified the dumping calculations accordingly.

(1) OJ C 266, 13. 9. 1996, p. 2.

(c) *Selling, general and administrative expenses (SG&A)*

(17) One Egyptian exporting producer contested the inclusion of allegedly exceptional high financing expenses in the construction of its normal value. It argued that these high financing expenses were incurred by two state-owned companies on their loss making domestic sales of the like product and, therefore, should not be used for calculating constructed normal value for a private-owned company, but that a 'reasonable' amount of SG&A expenses should be established for this purpose instead. It was further argued that this 'reasonable' amount could be based on the SG&A expenses of the third state-owned company investigated which had profitable domestic sales of the like product.

In that respect, it has to be mentioned that, where all companies are operating in free market conditions, the consistent practice of the Community institutions has been to include all costs incurred to produce and sell the product concerned on the domestic market, including financing expenses, in the construction of normal value irrespective of whether these costs are incurred by state or private-owned companies.

In addition, it is consistent practice when constructing normal value for companies without domestic sales to use the weighted average SG&A expenses of all investigated companies with domestic sales of the like product, as provided in Article 2 (6) (a) of the basic Regulation. Therefore, for the company in question the methodology used and explained in recital 32 of the provisional Regulation is confirmed.

(d) *Domestic profit margin*

(18) All Indian exporting producers contested the use of the actual profit margin realized by one Indian company on its representative profitable domestic sales in the construction of normal value for other Indian companies. They argued that this profit margin is exceptionally high because, to a great extent, it relates to domestic sales of branded products and that since export sales always concerned non-branded products, such domestic sales do not permit a proper comparison within the terms of Article 2 (3) of the basic Regulation. Four of these exporting producers also argued that this profit is not calculated by reference to the weighted average profits of other exporters or producers as provided for in Article 2 (6) (a) of the basic Regulation, but corresponds to only one exporting producer. It was further claimed in this respect that, in order to ensure that the amount for profits used is reasonable, the profits realised on sales of products of the same general category in India should in any event not be exceeded.

It should be noted that the profit margin used in constructing normal value corresponds to the weighted average profit realized on domestic sales of profitable types of branded and non-branded products by the Indian company concerned and that, had this claim been accepted, this would have been to the disadvantage of the producers, the profit margin used being lower than the profit margin realized by the same company solely on its domestic sales of non-branded products.

With regard to the use of the profit margin of only one company, it should be recalled that the investigation has been restricted to a sample of exporting producers in accordance with Article 17 of the basic Regulation and that the vast majority of the cooperating Indian companies are export oriented companies with no domestic sales of the like product. The Commission selected for the sample five Indian exporting producers two of which had declared at the time of the selection that they had made domestic sales of the like product. However, as indicated in recital 23 of the provisional Regulation, the investigation revealed that only one had representative domestic sales of the like product during the investigation period. Moreover, the reference in Article 2 (6) (a) of the basic Regulation to a weighted average amount for profits determined for other exporters or producers, does not exclude that such amount can be determined by reference to a weighted average of transactions and/or product types of a single exporter or producer. Consequently, it is not considered justified to establish the amount for profits in accordance with Article 2 (6) (b) or 2 (6) (c) of the basic Regulation, as claimed by the Indian companies concerned.

(19) One Indian exporting producer argued that its domestic profitability should have been assessed only on the basis of those types of the product concerned sold both domestically and on the Community market.

It should be noted however, that Article 2 (2) of the basic Regulation provides that the sales of the like product intended for domestic consumption shall normally be used to determine normal value if such sales volume constitutes 5 % or more of the sales volume to the Community of the product

under consideration. Therefore, all domestic sales of the like product intended for domestic consumption were, where appropriate, used to establish the domestic profit margin, whether or not particular product types were also exported to the Community.

It follows from the above that the methodology and the findings as set out in recitals 23 to 36 of the provisional Regulation are hereby confirmed.

2. Export price

(20) One Pakistani exporting producer which sold part of its exports to a related importer based in the Community, argued that the export price for the transactions made through the related importer should not be constructed because all prices charged to the related importer were at 'arm's length' and they are in line with prices charged to unrelated customers in the Community. Therefore it was argued that the actual export price charged to the related importer should be considered as reliable and that it should be used in the dumping calculations.

It is the consistent practice of the Community institutions, where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer, to construct it in accordance with Article 2 (9) of the basic Regulation. In this particular case the investigation revealed that all subsequent resales by the related importer to independent buyers were made at a loss. This was considered to be an indication that the prices charged by the exporter to its related importer are unreliable. Therefore, the methodology used to determine the export price as explained in recitals 37 and 38 of the provisional Regulation is confirmed.

3. Comparison

(21) One Indian exporting producer contested the Commission's refusal to grant an adjustment for level of trade.

Article 2 (10) (d) of the basic Regulation requires that it has to be shown that the export price is at a different level of trade from the normal value and that the difference has affected price comparability, which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. Therefore, in the absence of any substantiated evidence to this effect, the claim was rejected as already explained in recital 40 of the provisional Regulation.

(22) The same Indian company also contested the Commission's refusal to grant adjustments to normal value for certain selling expenses.

The request was provisionally rejected because the adjustments requested exceeded the expenses incorporated in the constructed normal value.

The company's renewed request showed the same shortcomings and could not, therefore, be accepted either.

However, it was finally decided to grant an adjustment limited to those expenses (e.g. commissions and freight) which could be identified in the allocation of SG&A expenses as submitted by the company in its response to the Commission's questionnaire and which were verified during the investigation and incorporated in the constructed normal value.

(23) This Indian company further challenged the Commission's refusal to grant an adjustment to normal value for credit costs.

As explained in recital 44 of the provisional Regulation, this claim had to be rejected given that the delivery of all goods sold in the domestic market by the company concerned took place only after payment. Thus, since the seller did not pass on to the buyer the use or the possession of the goods in question until the time of payment, it cannot be argued that there was any credit granted by the seller.

(24) One Pakistani exporting producer also challenged the Commission's refusal to grant an adjustment to normal value for credit costs. In order to support its argument, it was requested to submit additional information following the imposition of provisional measures.

Since the information submitted did not contradict but satisfactorily supplemented the data previously verified by the Commission at the premises of the company concerned, the claim for an adjustment concerning credit costs was accepted and the calculations were revised accordingly.

(25) All Pakistani exporting producers contested the Commission's calculation of the adjustment for import charges and duties borne by the like product and in particular by certain materials physically incorporated therein, when intended for consumption in Pakistan and refunded on export of the product under consideration pursuant to the

Pakistani legislation. They argued that the amount of the adjustment should be expressed as a percentage of the cost of production and that the same percentage should then be deducted from the normal value.

The argument neglects the fact that such a percentage calculated by reference to the cost of production should be applied on the appropriate basis and that the normal value, being the equivalent of a domestic price, cannot be considered as such. Therefore, the argument was not accepted.

(26) One Pakistani company argued that the amount of the adjustment for import charges and duties borne by the like product, was underestimated in the Commission's dumping calculations for certain types of product.

The Commission reviewed the calculations and accepted the claim where appropriate.

(27) The Pakistani authorities were of the opinion that the duty drawback adjustment granted to the cooperating exporting producers was not sufficient. They concede that the relevant Pakistani legislation mentions only a limited number of imported materials (certain dyes and chemicals) which are eligible for refund if the finished product is exported and that the Commission has granted an adjustment in this respect. However, they argue that, upon proof of export performance, Pakistani exporters also receive a refund for a number of other indirect taxes and duties borne by sales of the like product in the domestic market and that this refund should also give entitlement to an adjustment.

In this respect, it should be noted that any adjustment pursuant to Article 2 (10) of the basic Regulation requires that it is demonstrated that there is a difference in factors which affect price comparability. As part of such demonstration pursuant to Article 2 (10) (b), it has to be shown that the cost concerned, in this case import charges or indirect taxes, has actually been incurred by the exporting producer for the product concerned when intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the Community. Neither the Pakistani exporting producers nor the Pakistani authorities could demonstrate a link between any other indirect taxes and duties paid and the amounts refunded. In addition, the Pakistani authorities could not specify the indirect taxes or duties for which the additional refund claimed was allegedly granted. Therefore, the request was not accepted.

It follows that unless otherwise provided above the conclusions drawn in recitals 39 to 45 of the provisional Regulation are hereby confirmed.

4. Dumping margins

(a) *General methodology*

(28) The representatives of the Indian and the Egyptian cooperating exporting producers, which were not included in the sample and, therefore, were not investigated, argued that the dumping margins established for investigated state-owned companies should not be taken into account when calculating the dumping margins to be allocated to private-owned companies not investigated.

As already explained above, the Commission cannot treat differently state and privately owned companies where all companies are operating in free market conditions. Therefore, the claim cannot be accepted and the provisions of recitals 46 to 48 of the provisional Regulation are confirmed.

(b) *Dumping margins for companies in the sample*

(29) The comparison between the normal value and the export price, in accordance with the methodology of the provisional Regulation and after revisions, where appropriate, following the arguments made by interested parties, showed the existence of dumping in respect of all companies investigated. The definitive dumping margins expressed as a percentage of the CIF import price at the Community frontier are as follows:

India

Anglo French Textiles	24,7 %
The Bombay Dyeing & Manufacturing Co. Ltd	7,7 %
Nowrosjee Wadia & Sons Ltd	7,7 %
Madhu Industries Ltd	17,0 %
Madhu International	17,0 %
Omkar Exports	14,2 %
Prakash Cotton Mills Ltd	2,6 %

Egypt

Damietta Spinning & Weaving Co.	13,5 %
El Nasr Wool and Selected Textiles Co. (STIA)	13,5 %
Orient Linen & Cotton Co.	13,5 %
Stephanie Textile	8,7 %

Pakistan		
Al-Abid Silk Mills Ltd	6,7 %	
Al Abid Export (Pvt) Ltd	6,7 %	
Al-Karam Textile Mills Ltd	1,3 %	*(de minimis)*
Fateh Textile Mills Ltd	6,3 %	
Gul Ahmed Textile Mills Ltd	0,1 %	*(de minimis)*
Excel Textile Mills Ltd	0,1 %	*(de minimis)*
Mohammad Farooq Textile Mills Ltd	1,8 %	*(de minimis)*

(c) *Dumping margin for cooperating companies not in the sample*

(30) Cooperating companies not selected in the sample (see recitals 17 and 21 of the provisional Regulation and recitals 12 and 13 of this Regulation) were allocated the average dumping margin of the companies in the sample, weighted on the basis of their export turnover to the Community. In accordance with Article 9 (6) of the basic Regulation, when calculating this average dumping margin *de minimis* margins established have been disregarded. Expressed as a percentage of the CIF import price at the Community frontier, these definitive dumping margins are as follows:

India	11,6 %
Egypt	13,5 % (for state-owned companies)
Egypt	13,0 % (for other companies)
Pakistan	6,4 %

The companies entitled to the reduced rates are set out in an Annex to this Regulation.

(d) *Dumping margin for non-cooperating companies*

(31) For non-cooperating companies a dumping margin was determined on the basis of the facts available in accordance with Article 18 of the basic Regulation. Since the level of cooperation was high, it was considered appropriate to set the dumping margin for non-cooperating companies in each country concerned at the level of the highest dumping margin established for a company in each sample because it would constitute a bonus for non-cooperation to assume that the dumping margin to be allocated to exporting producers which did not make themselves known is lower than that found for a cooperating exporting producer.

These definitive dumping margins expressed as a percentage of the CIF import price at the Community frontier, are the following:

India	24,7 %
Egypt	13,5 %
Pakistan	6,7 %.

E. COMMUNITY INDUSTRY

1. Definition of the Community industry

(32) Exporters from all three exporting countries observed that the complainant Community producers taken to be the Community industry made up just 34 % of total Community production. They claimed that this showed that a majority of bed linen producers in the Community did not support the complaint and should therefore be assumed not to be injured, and that the Community industry was not therefore representative of total Community production.

However, in response to the provisional measures only two non-complainant Community producers, which originally expressed no opinion to the Commission on the complaint, expressed opposition to the duties. The combined production of these two producers was less than one-third of the total production of the complainants. Throughout the proceeding, therefore, the complainants represented considerably more than 50 % of the collective output of those producers expressing either support for or opposition to the complaint.

(33) Pakistani exporters also claimed that the Commission had not used the correct test in determining whether Community producers which also import bed linen from the countries concerned should be excluded from the Community industry (recitals 52 to 55 of the provisional Regulation). By way of clarification, it is confirmed that the test used in recital 54 was whether bed linen imported from the countries concerned accounted for 10 % of the turnover in bed linen of the companies in question, rather than 10 % of total company turnover. Under this test it was found and is hereby confirmed that none of the sampled companies retained in the list of 35 complainants made sufficient imports of the product concerned by this proceeding from the countries in question to be excluded from the definition of the Community industry.

2. Conclusion

(34) In conclusion, the finding that the 35 complainant companies represent a major proportion of total Community production within the meaning of

Article 5 (4) of the basic Regulation and that they therefore constitute the Community industry within the meaning of Article 4 (1) of the basic Regulation is confirmed.

F. INJURY

1. Cumulative assessment of the effects of the dumped imports

(35) Pakistani exporters argued that imports from Pakistan should not have been cumulated with those from India and Egypt for the assessment of injury. In support of this they pointed out that imports from Pakistan had grown less fast than those from the other two countries, that according to Eurostat the average price of the imports from Pakistan was higher and had risen while the others had fallen, and that the dumping margins calculated for Pakistan were on average about half those for the other two countries concerned.

These arguments were examined. It was noted that imports from Pakistan, while rising less quickly than those from India and Egypt (in particular because of quota restraints), had nonetheless risen and remained the highest of the three exporting countries. As for the Eurostat data on average prices, it should be remembered that this data groups together a wide variety of different products. It was observed among the sampled Pakistani exporters that their product mix included a greater proportion of higher value products (e.g. satin and other products from finer cotton yarn) than sampled producers in India and Egypt. It was consequently found that the data on average prices was highly influenced by differences and changes in product mix and could not justify differential treatment in the overall analysis of injury.

Finally, the size of dumping margins for a given country, provided they are more than *de minimis*, is not a criterion for the decision as to whether or not to make a cumulative assessment of the effects of the dumped imports.

(36) The cumulative assessment made in the provisional Regulation is therefore confirmed under the terms of Article 3 (4) of the basic Regulation.

2. Prices of the dumped imports

(37) Exporters and importers claimed that the Commission's analysis of the degree to which the imports concerned undercut the prices of the sampled Community producers, and the consequent calculation of injury margins, were flawed, for various reasons:

— firstly because the criteria for selection of the 'reference products', on which the analysis was based, were claimed not to have been explained,

— secondly, because the reference products accounted, they claimed, in some cases for only a small proportion of Community sales of the sampled exporters in the countries concerned, allegedly indicating a lack of competition between imported and Community products and a lack of reliability of the analysis,

— thirdly, because it was claimed that in making the price comparisons inadequate account had been taken of the differences in sales channels between Community producers and exporters from the countries concerned,

— fourthly, because there were claimed to be quality differences which should be taken into account,

— fifthly, because it was claimed that products imported and Community products falling within the same reference product definition could not be compared, there being other criteria besides size, weaving construction and finish by which the products differed or because the range of constructions considered to be comparable was too wide.

(38) On the first point, it is confirmed that the reference products were selected, for each market studied, following consultation with the relevant national producers' association and also using information available to the Commission. Furthermore, it is confirmed that the investigation showed that the sizes, weaving constructions and finishes chosen as reference products were indeed among the most prevalent in the markets concerned. Finally, at no time did the exporters or their representatives define other products which in their view would have been more appropriate for an analysis of undercutting.

On the second point, it was noted that the wide variety of bed linen products limited the proportion of each exporter's sales which could accurately be compared with sales by the sampled Community producers. Given the Commission's intention to conduct accurate comparisons (comparing prices only of products matching in size, weaving construction and finish) and the limits to the number of different such products for which accurate price information could be collected in the time available, it is unsurprising that the proportion of each exporter's sales in the Community which could reasonably be compared with the products of the sampled Community producers was in some

exceptional cases as low as 5 %. This was particularly the case of exporters concentrating on simple, high volume products (a market segment from which the Community industry is now largely excluded by import penetration). This invalidated neither the finding that there were significant market segments where the dumped imports competed with Community production nor the method adopted for assessing undercutting, since the quantities overall were in all cases considered sufficiently representative and in several cases exceeded 30 %. In any event, it should be noted that low export prices in one market segment, given the high interchangeability of the product concerned, will also have negative effects on prices in adjacent segments.

On the third point, the exporters substantiated their claim with evidence that the total mark-up from the CIF export price to the ultimate retail price was much greater than the level of trade adjustment made by the Commission. The Commission considered however that this was not relevant information since prices were not being compared at the level of sale to the ultimate consumer but at the level of sale to the first independent customer. The exporters' claim is therefore rejected.

On the fourth point, the claim for adjustment for quality differences was based on average weights per square metre of the Community and imported products. Since however the weight per square metre of fabric is a function of its weaving construction, and since products were compared only when they corresponded in terms of this construction, there was no justification for such an adjustment and the claim is therefore rejected.

On the fifth point, the Commission considered the arguments but could not accept it. This conclusion was reached bearing in mind the large number of reference products allowing a detailed analysis and the fact that remaining differences within each reference product definition were compensated by a price comparison carried out on an average per kilo basis.

(39) The finding in recital 79 of the provisional Regulation that the imported products undercut the products of the sampled Community producers, and the findings of the level of the undercutting, are therefore confirmed.

3. Situation of the Community industry

(40) Exporters from all the exporting countries claimed that the Commission's analysis of injury was defective in that it referred to the significant decline in total Community production of bed linen in assessing the situation of the Community industry. They claimed in particular that information concerning companies not included in the definition of the Community industry or which no longer produce bed linen cannot be used to construe a finding of material injury.

These claims were examined carefully. It should however be remarked that the principal basis for the finding of material injury was the reduced profitability and price suppression of the Community industry as observed among the sampled companies.

(41) In the assessment of injury pursuant to Article 3 of the basic Regulation, the Community institutions have to assess the economic situation of the Community industry. This assessment usually covers the analysis of a time period of four to five years as in the present case ('assessment period'). Such an assessment is commonly based on an analysis of the complaining industry and not necessarily on companies accounting for the totality of Community production on the ground that the situation of a major proportion of the Community production is representative for its totality. Such an assessment, however, also has to take into account the structure and the nature of the industry under consideration. In the present case this industry is characterized by a high number of operators, in many cases small- and medium-sized companies, and by the fact that it is a sector with relatively low barriers to exit. The latter is mainly due to the fact that machinery can be sold or used for other products relatively simply. This has the effect that material injury is likely to manifest itself through the exit of economic operators within the assessment period.

Consequently, to limit the assessment of injury only to companies which are still operational at the end of the assessment period (i.e. at the time of the lodging of the complaint) and thus able actively to support a complaint would mean that any injury caused to companies which have closed down before this point in time would go unconsidered in the analysis. Furthermore, it should be noted that this distortion could even be aggravated as the surviving complaining companies of the Community industry may have benefited, possibly only temporarily, from the disappearance of other companies, causing their positive development to be overestimated.

In the present case, it should be noted that 29 companies of the bed linen industry have closed down or ceased production: that is to say, that a substantial number of companies have ceased operation. Furthermore, given the substantial price undercutting established, the strong increase in the volumes of the imports concerned and their consequent rise in market share, any relatively positive development of the complaining producers must be seen as threatened in the absence of anti-dumping measures.

4. Conclusion

(42) The finding of material injury, within the meaning of Article 3 (1) of the basic Regulation, is therefore confirmed.

G. CAUSAL LINK

(43) Exporters from all three countries concerned claimed that any material injury could be ascribed to the fall in consumption of 7 % between 1992 and the investigation period. However, as noted in recital 105 of the provisional Regulation, the total fall in sales by all Community producers significantly exceeded the total fall in consumption. As to the exporters' argument that data concerning the totality of Community production was not relevant to the determination of whether the dumped imports caused material injury, this suggestion is rejected on the grounds set out in recitals 40 and 41 of this Regulation. The finding is therefore confirmed that the fall in consumption does not contradict the finding that the dumped imports, taken in isolation, have caused material injury to the Community industry. The findings concerning the causal links between the dumped imports and the material injury suffered by the Community industry as set out in recitals 109 to 111 of the provisional Regulation are therefore confirmed.

H. COMMUNITY INTEREST

1. Interests of consumers

(44) Certain importers claimed that the impact on consumers would be greater than that assessed in the provisional Regulation. In its provisional findings (recital 124 of the provisional Regulation) the Commission had noted that the imports concerned by the proceeding were sold to the ultimate consumer at prices very much higher than the price at the Community frontier and considered that the duty would therefore represent a smaller proportion of the ultimate price to the consumer than the *ad valorem* percentage levied. Since subsequent costs (e.g. of transport, storage and retailing) would not be increased by the imposition of a duty, the impact on consumers of the proposed measures was evaluated as minor.

(45) Certain parties challenged these arguments. Some claimed that retailers set prices to the consumer at a set percentage mark-up from their purchase price, so that the price to the consumer would rise by the same percentage as the duty imposed. Some retailers even claimed that the percentage increase in the price to the consumer could be higher than the duty level: they claimed that products were sold in particular price brackets and that if the duty increased the price of a given product above one bracket, it would be priced in the next bracket, an increase which might be as high as 20 %.

The Commission considered that these claims did not constitute a reason to depart from the provisional findings. It was concluded that pressure of competition between retailers should ensure that price increases to consumers would not exceed the cost increase attributable directly to the duty. The view reached by the Commission at the provisional stage that this duty would have only a minor impact on consumers, especially when compared with other factors such as currency fluctuations, is therefore confirmed. It should be noted in this context that this conclusion was not subsequently contested or commented on by any organization representing consumers following the provisional measures.

2. Interests of other users

(46) Following the imposition of provisional duties, certain parties came forward claiming that the duties imposed would have a severe negative effect on their businesses. These were, in particular, companies involved in the rental of linen to hotels and other institutions. An association representing such users had come forward before provisional measures and had been invited by the Commission to supply relevant information but had not done so.

The parties coming forward after the imposition of provisional duties were similarly asked to provide relevant information such as the proportion of their costs represented by purchases of bed linen but none did so within the time limits specified in the provisional Regulation. Some of them sought exclusion of certain types of bed linen from the

scope of the current proceeding (see recitals 4 and 6 above). In so doing they indicated that the types of bed linen used were those capable of multiple use and frequent industrial washing. The Commission therefore took the view that while these businesses would suffer some impact from the imposition of measures, the original costs of purchasing the bed linen concerned would be minor when compared with the continuing service costs of laundry, collection and delivery. The claims therefore gave no compelling reason why measures should not be imposed.

I. ANTI-DUMPING MEASURES

1. Definitive duties

(47) Injury margins remain above the level of the dumping margins in all cases. Therefore a definitive anti-dumping duty should be imposed at the level of the dumping margins set out in recitals 29 to 31 above, with the exception of companies with *de minimis* dumping margins for which no duty should be imposed.

2. Collection of provisional duties

(48) The magnitude of the dumping margins found for the exporting producers and the seriousness of injury caused to the Community industry would normally justify the definitive collection of the provisional duties up to the level of the definitive duties.

Some exporters and importers concerned argued however that the provisional Regulation was not imposed within the period specified in the last sentence of Article 7 (1) of the basic Regulation. In the light of the uncertainty which has arisen as to whether, when judged by reference to the provisions of Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits [1], the deadline was met, the Council considers that in order to avoid legal uncertainty, the provisional duties should not be definitively collected.

3. Certification of handloom items

(49) In order to benefit from the exemption for handloom products referred to in recital 7, a certificate of handloom origin is required. The certificate should be in the form attached in Annex II and it should be issued by the competent authorities of the country of origin. The certificate provided for in Article 3 of Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries [2] should also be regarded as adequate for the granting of the exemption.

(50) The Commission will closely monitor handloom bed linen imports from the countries concerned and if the circumstances so require will take all the appropriate measures.

4. Future requests for new exporter treatment

(51) Since sampling has been used in the investigation, a new exporters' review pursuant to Article 11 (4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding. However, as already explained in recitals 12 and 13, in order to ensure equal treatment between any genuine new exporting producer and the cooperating companies not included in the sample, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporting producers which would otherwise be entitled to a review pursuant to Article 11 (4) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports 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 originating in India, Pakistan and Egypt, not covered by the provisions of Article 2 and falling within the following CN codes:

CN code	Taric code
ex 6302 21 00	6302 21 00*81
	6302 21 00*89
ex 6302 22 90	6302 22 90*19
ex 6302 31 10	6302 31 10*90
ex 6302 31 90	6302 31 90*90
ex 6302 32 90	6302 32 90*19

[1] OJ L 124, 8. 6. 1971, p. 1.

[2] OJ L 275, 8. 11. 1993, p. 1. Regulation as last amended by Regulation (EC) No 824/97 (OJ L 119, 8. 5. 1997, p. 1).

2. Subject to paragraphs 3 and 4, the rates of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

Country	Rate of duty	Taric additional code
Egypt	13,5 %	8900
India	24,7 %	8900
Pakistan	6,7 %	8900

3. Products manufactured and sold for export by the exporting producers listed in Annex I, shall be subject to the following anti-dumping duty rates:

Country	Rate of duty	Taric additional code
Egypt	13,0 %	8041
India	11,6 %	8042
Pakistan	6,4 %	8043

4. Products manufactured and sold for export by the companies listed below shall be subject to the following anti-dumping duty rates:

Country	Manufacturer	Rate of duty	Taric additional code
India	Anglo French Textiles	24,7 %	8044
	The Bombay Dyeing & Manufacturing Co. Ltd	7,7 %	8045
	Nowrosjee Wadia & Sons Ltd	7,7 %	8045
	Madhu Industries Ltd	17,0 %	8046
	Madhu International	17,0 %	8046
	Omkar Exports	14,2 %	8047
	Prakash Cotton Mills Ltd	2,6 %	8048

Country	Manufacturer	Rate of duty	Taric additional code
Egypt	Stephanie Textile	8,7 %	8049

Country	Manufacturer	Rate of duty	Taric additional code
Pakistan	Al-Abid Silk Mills Ltd	6,7 %	8050
	Al-Abid Export (Pvt) Ltd	6,7 %	8050
	Al-Karam Textile Mills Ltd	0,0 %	8051
	Fateh Textile Mills Ltd	6,3 %	8052
	Mohammad Farooq Textile Mills Ltd	0,0 %	8051
	Gul Ahmed Textile Mills Ltd	0,0 %	8051
	Excel Textile Mills Ltd	0,0 %	8051

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Products classified under the CN codes mentioned in Article 1 (1) and made of fabrics woven on looms operated exclusively by hand or foot are exempted from the duty imposed in Article 1 (Taric codes 6302 21 00*21, 6302 21 00*29, 6302 22 90*11, 6302 31 10*10, 6302 31 90*10, 6302 32 90*11).

2. The exemption is granted only to products accompanied on their release for free circulation in the Community by either

(i) a certificate from the competent authorities of the country of origin which conforms to the model attached as Annex II; or

(ii) a certificate issued pursuant to Article 3 of Regulation (EEC) No 3030/93.

3. Certificates issued pursuant to paragraph 2 (i) shall only be valid if the countries of origin have informed the Commission of the names and addresses of the governmental authorities situated in their territory which are empowered to issue these certificates, and have sent it specimens of stamps used by those authorities and the names and addresses of the relevant governmental authorities responsible for the control of the certificates. The stamps shall be valid as from the date of receipt by the Commission of the specimens.

4. Certificates issued pursuant to paragraph 2 shall only be valid if presented with options (a) and (c) in box 11 deleted and if they certify that the products concerned fulfil the description in option (b).

5. The appropriate provisions implementing the Community Customs Code, and notably the provisions concerning administrative cooperation contained in Article 93 *et seq* of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (1), shall apply *mutatis mutandis.*

Article 3

Where any new exporting producer from the countries concerned provides sufficient evidence to the Commission that

— it did not export to the Community the products described in Article 1 (1) during the investigation period (1 July 1995 to 30 June 1996),

— it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures imposed by this Regulation,

— it has actually exported to the Community the products concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

then the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1 (3) by adding that new exporting producer to the list in Annex I.

Article 4

Amounts secured by way of the provisional anti-dumping duty imposed by Regulation (EC) No 1069/97 shall be released.

Article 5

This Regulation shall enter into force on the day following 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, 28 November 1997.

For the Council

The President

G. WOHLFART

(1) OJ L 253, 11. 10. 1993, p. 1. Regulation as last amended by Regulation (EC) No 89/97 (OJ L 17, 21. 1. 1997, p. 28).

ANNEX I

EGYPT

AMC Arab Metals Co., Cairo
Dantex Ltd, Cairo
Egyptex, Cairo
El Naggar Egyptian Co. For Furniture, Elmahalla
Nile Tex, Alexandria
Wintex-Wahab International Textiles Ltd, Cairo
Zahret El Mehalla for Weaving, Mehalla El Kubra — El-Seka El-Wosta

INDIA

A. Shashikant & Co., Mumbai (Bombay)
Ajit Impex, Mumbai (Bombay)
Akai Impex Ltd, Mumbai (Bombay)
Alps Industries Ltd, Ghaziabad
Amitara Fabrics Pvt. Ltd, Mumbai (Bombay)
Anunay Fab. Pvt. Ltd, Ahmedabad
B.X. International, Mumbai (Bombay)
Badridass Gauridatt Pvt. Ltd, Mumbai (Bombay)
Brijmohan Purusottamdas, Mumbai (Bombay)
Bünts Exports Pvt. Ltd, Mumbai (Bombay)
Chhaganlal Kasturchand & Co. Ltd, Mumbai (Bombay)
Classic Connections, Mumbai (Bombay)
Concepts International India Pvt. Ltd, Gurgaon
Cotfab Exports, Mumbai (Bombay)
Country House, New Delhi
Deepak Traders, Mumbai (Bombay)
Dhanalakshmi Weaving Works, Cannanore
Divya Textiles, Mumbai (Bombay)
Dyna-Impex Pvt. Ltd, Mumbai (Bombay)
Elite Exports, Mumbai (Bombay)
Emperor Trading Company, Tirupur
Encore Themes, New Delhi
Govindji Trikamdas & Co., Mumbai (Bombay)
Hindustan Textiles, Cannanore
Ibats, New Delhi
Incotex, Mumbai (Bombay)
Indo Euro Textiles Pvt. Ltd, New Delhi
Indo Export Corporation, New Delhi
International Services, Chennai (Madras)
Intex Exports, Mumbai (Bombay)
Invitation Apparels Pvt. Ltd, Mumbai (Bombay)
Jindal India, Mumbai (Bombay)
Jindal Worldwide Ltd, Ahmedabad
K. Overseas, New Delhi
Kanodia Fabrics (International), Mumbai (Bombay)
Kaushalya Export, Ahmedabad
Kitu Bhandari Pvt. Ltd, New Delhi
Kothari Industrial Corporation Ltd, Chennai (Madras)
Lakshmi Apparels and Wovens Limited, Coimbatore
Mahalaxmi Exports, Ahmedabad
Maritex Exports, Mumbai (Bombay)
Marwaha Exports, New Delhi
Milano International (India) Pvt. Ltd, Chennai (Madras)
Minar Exports, Mumbai (Bombay)
Mridul Enterprises, New Delhi
Niaz International, Farrukhabad
P.J. Exports, Mumbai (Bombay)
Patodia Syntex Ltd, Mumbai (Bombay)
Pattex Exports, Mumbai (Bombay)
Prem Textiles, Indore
Punch Exporters, Mumbai (Bombay)
Raghuvir Exim Ltd, Ahmedabad
Rajka Designs Pvt. Ltd, Ahmedabad
Sanna Inttex, Mumbai (Bombay)
Santex Exports, Mumbai (Bombay)
S. D. Enterprises, Mumbai (Bombay)
Shetty Garments Pvt. Ltd, Mumbai (Bombay)
Shivani Exports, Mumbai (Bombay)
Shorewala Exim Int'l, New Delhi
Shrijee Enterprises, Mumbai (Bombay)
Shruti Designs Pvt. Ltd, Mumbai (Bombay)
Sohanlal Balkrishna Export, Mumbai (Bombay)
Southern Sales & Services, Bangalore
Standard Industries Ltd, Mumbai (Bombay)
Starline Exports, Mumbai (Bombay)
Sumangalam Exports Pvt. Ltd, Mumbai (Bombay)
Sunil Impex, Mumbai (Bombay)
Sunil Silk Mills, Mumbai (Bombay)
Sunny Made Ups, Mumbai (Bombay)
Suresh & Co., Mumbai (Bombay)
Surya International, Panipat
Syndicate Impex, Ahmedabad
Syntex Corporation Ltd, Mumbai (Bombay)
Tata Exports Limited, Mumbai (Bombay)
Texcellence Overseas, Mumbai (Bombay)
The Hindoostan Spg. & Wvg. Mills Ltd, Mumbai (Bombay)
The Ruby Mills Limited, Mumbai (Bombay)
Trend Setters, Mumbai (Bombay)
Trend Setters K.F.T.Z., Mumbai (Bombay)
Vepar Private Limited, Ahmedabad
Vigneshwara Exports Pvt. Ltd, Mumbai (Bombay)
Wooltop Weaves, Chennai (Madras)

PAKISTAN

Adamjees Impex International, Karachi
Afroze Textile Industries (Private) Ltd, Karachi
Amer Fabrics Limited, Lahore
Anjum Textile Mills (Private) Ltd, Faisalabad
Arzoo International (Pvt.) Ltd, Faisalabad
Arzoo Textile Mills Ltd, Faisalabad
Asco International (Pvt.) Ltd, Karachi
Aziz Sons, Karachi
B.I.L. Exporters, Karachi
Be Be Jan Pakistan (Pvt.) Ltd, Faisalabad
Bela Textiles Limited, Karachi

Dyer Textile & Printing Mills (Pvt.) Ltd, Karachi
Eksons Sales Organization, Karachi
Elahi Enterprises Ltd, Lahore
Elasta Amtex Industries (Pvt.) Ltd, Karachi
Fairdeal Textiles (Pvt.) Ltd, Karachi
Faisal Industries, Karachi
Fashion Knit Industries, Karachi
Gohar Enterprises, Faisalabad
Gohar International (Pvt.) Ltd, Faisalabad
H. A. Industries (Private) Ltd, Faisalabad
Home Furnishings Ltd, Karachi
Kam International, Karachi
Kausar Textile Industries (Pty) Ltd, Faisalabad
Kohinoor Textile Mills Ltd, Rawalpindi
Latif Int'l (Pvt.) Ltd, Faisalabad
Liberty Mills Limited, Karachi
Linex International (Pvt.) Ltd, Karachi
Lotus Textile Industries Limited, Karachi
Lucky Impex, Karachi
Lucky Tex, Karachi
Lucky Textile Mills, Karachi
M.F.M.Y. Industries Ltd, Karachi
M.R. Export (Private) Ltd, Lahore
Mukaty Corporation, Karachi
Nadia Textile International (Pvt.) Ltd, Lahore
Nakshbandi Industries Limited, Karachi
Nash Garments (Pvt.) Ltd, Karachi
Nina Industries Ltd, Karachi
Nishat Mills Limited, Karachi
Nishitex Enterprises, Karachi
Nu-tex (Pvt.) Ltd, Karachi
Parsons Industries (Pvt.) Ltd, Karachi
S.P.R.L. Rehman Brothers, Lahore
Sas Texexport (Pvt.) Ltd, Karachi
Shabbir Associates, Karachi
Sharif Textile Industries (Pvt.) Ltd, Faisalabad
Sitara Textile Industries (Pvt.) Ltd, Faisalabad
Syncotex Sa Agencies, Karachi
The Crescent Textile Mills Limited, Faisalabad
Today's Sportswear Inc., Karachi
Towellers Limited, Karachi
Unibro Industries Limited, Karachi
Union Exports (Pvt.) Ltd, Karachi
ZN Textiles (Pvt.) Ltd, Faisalabad

ANNEX II

1 Exporter (name, full address, country) Exportateur (nom, adresse complète, pays)	**ORIGINAL**	2 No
	CERTIFICATE in regard to HANDLOOMS, TEXTILE HANDICRAFTS and TRADITIONAL TEXTILE PRODUCTS, OF THE COTTAGE INDUSTRY, issued in conformity with and under the conditions regulating trade in textile products with the European Community **CERTIFICAT relatif aux TISSUS TISSÉS SUR MÉTIERS À MAIN, aux PRODUITS TEXTILES FAITS À LA MAIN et aux PRODUITS TEXTILES RELEVANT DU FOLKLORE TRADITIONNEL, DE FABRICATION ARTISANALE, délivré en conformité avec et sous les conditions régissant les échanges de produits textiles avec la Communauté européenne**	
3 Consignee (name, full address, country) Destinataire (nom, adresse complète, pays)	4 Country of origin Pays d'origine	5 Country of destination Pays de destination
6 Place and date of shipment — Means of transport Lieu et date d'embarquement — Moyen de transport	7 Supplementary details Données supplémentaires	

8 Marks and numbers — Number and kind of packages — DESCRIPTION OF GOODS Marques et numéros — Nombre et nature des colis — DÉSIGNATION DES MARCHANDISES	9 Quantity Quantité	10 FOB Value (1) Valeur fob (1)

11 CERTIFICATION BY THE COMPETENT AUTHORITY — VISA DE L'AUTORITÉ COMPÉTENTE

I, the undersigned, certify that the consignment described above includes only the following textile products of the cottage industry of the country shown in box No 4:

a) fabrics woven on looms operated solely by hand or foot (handlooms) (2)

b) garments or other textile articles obtained manually from the fabrics described under a) and sewn solely by hand without the aid of any machine (handicrafts) (2)

c) traditional folklore handicraft textile products made by hand, as defined in the list agreed between the European Community and the country shown in box No 4.

Je soussigné certifie que l'envoi décrit ci-dessus contient exclusivement les produits textiles suivants relevant de la fabrication artisanale du pays figurant dans la case 4:

a) tissus tissés sur des métiers actionnés à la main ou au pied *(handlooms)* (2)

b) vêtements ou autres articles textiles obtenus manuellement à partir de tissus décrits sous a) et cousus uniquement à la main sans l'aide d'une machine *(handicrafts)* (2)

c) produits textiles relevant du folklore traditionnel fabriqués à la main, comme définis dans la liste convenue entre la Communauté européenne et le pays indiqué dans la case 4.

12 Competent authority (name, full address, country) Autorité compétente (nom, adresse complète, pays)	At — À ....., on — le..... ..... (Signature) (Stamp — Cachet)

(1) In the currency of the sale contract. — Dans la monnaie du contrat de vente.
(2) Delete as appropriate. — Biffer la (les) mention(s) inutile(s).