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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1312/98

of 24 June 1998

imposing a definitive anti-dumping duty on imports of synthetic fibre ropes originating in India and collecting definitively the provisional duty imposed

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 Article 9(4) thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 18/98 [2] (hereinafter referred to as 'the provisional duty Regulation'), provisional anti-dumping duties were imposed on imports of synthetic fibre ropes falling within CN codes 5607 49 11, 5607 49 19, 5607 50 11 and 5607 50 19 originating in India.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping measures, a number of interested parties submitted comments in writing.

(3) The only cooperating Indian exporter, Garware-Wall Ropes Ltd, requested and was granted a hearing.

(4) The Commission continued to seek and verify all information deemed necessary for the definitive findings.

(5) 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 of amounts secured by way of provisional duty. They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered and, where deemed appropriate, taken into account in the definitive findings.

C. GROUNDS FOR THE INITIATION OF THE PROCEEDING

(7) The cooperating Indian exporter reiterated his objections to the opening of the proceeding.

However, this issue was already covered in recital 1 of the provisional duty Regulation. In this respect, it should be noted that the submission made by the Indian exporter concerned did not contain any evidence or argument which would invalidate the conclusions stated in recital 1 of the provisional duty Regulation.

D. PRODUCT CONCERNED AND LIKE PRODUCT

(8) In the absence of any new information, the provisional findings, as stated in recitals 7 to 9 of the provisional duty Regulation, are hereby confirmed.

E. DUMPING

1. Normal value

(9) The cooperating exporting producer claimed and demonstrated that the cost of production used in order to examine whether or not domestic sales were made in the ordinary course of trade contained trade discounts accounted for as selling expenses, while the domestic sales prices used for

[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 4, 8. 1. 1998, p. 28.

this purpose were net of these discounts. The Commission accepted this claim and, accordingly, amended both the constructed normal value and that based on domestic prices.

(10) The other findings made in recitals 10 to 12 of the provisional duty Regulation concerning the determination of normal value are hereby confirmed.

2. **Export price**

(11) In the absence of any new information, the findings set out in recital 13 of the provisional duty Regulation are hereby confirmed.

3. **Comparison**

(12) The cooperating exporting producer claimed that the method used by the Commission to grant adjustments for duty drawback did not reflect the amount of import duties paid for the product concerned sold on the domestic market. It argued that the Commission should not have allocated the duty drawback adjustment on the basis of domestic turnover of the product concerned but on the basis of the quantity sold domestically. After further examination, this claim was accepted and the calculations were modified accordingly.

(13) The cooperating company reiterated its claim for adjustments for the domestic market infrastructure and for differences in physical characteristics of the exported and the domestically sold products. However, as the company did not supply any new supporting evidence, the positions set out in recital 15 of the provisional duty Regulation are hereby confirmed.

(14) As far as credit costs are concerned, the cooperating company, which had already been granted adjustments for credit costs directly linked to the domestic sales at the provisional stage, claimed that the Commission should have granted an additional adjustment taking into account the difference in interest rates for financing domestic and export working capital. This claim had to be rejected since the company was not in a position to quantify correctly these differences nor to show how they could have affected price comparability. In this context, it should be noted that a difference in costs incurred for export sales and domestic sales does not in itself justify an adjustment under Article 2(10)(k) of Regulation (EC) No 384/96, (hereinafter referred to as the 'Basic Regulation').

4. **Dumping margin**

(15) In the absence of any new arguments concerning the methodology used for the calculation of the dumping margin, the methodology described in recitals 16 and 17 of the provisional duty Regulation is hereby confirmed. On this basis, the dumping margins are as follows:

— in view of the changes in the calculations mentioned above, the definitive dumping margin calculated for the cooperating exporting producer, expressed as a percentage of the CIF price at Community frontier, is 87,5 %,

— the definitive dumping margin established for Indian exporting producers other than those cooperating in this investigation, expressed as a percentage of the CIF price at Community frontier, is 243,0 %.

F. **COMMUNITY INDUSTRY**

(16) In the absence of any new information, the provisional findings, as stated in recital 18 of the provisional duty Regulation, are hereby confirmed.

G. **INJURY**

1. **Sampling**

(17) The cooperating Indian exporter contested the selection of Community producers made by the Commission for the purposes of the investigation of injury on the grounds that it was different from the sample used in the previous proceeding concerning imports of synthetic fibre ropes originating in India, which was terminated without the adoption of measures. This exporter claimed that failure to use the same sample of Community producers would result in a biased analysis, since the Commission would not be able to assess the degree of any injury suffered by the Community industry in the present proceeding, as compared with that in the previous case.

(18) Furthermore, the Indian exporter argued that four of the companies in the sample had been inadequately selected for the examination of injury and that, if those companies were consequently excluded, the remaining Community producers in the sample would not be representative of the Community industry any longer. The Indian exporter alleged that the activities of one company had been severely disrupted by a fire which had destroyed its production facilities and that any injury suffered by this company would be due to this event. It was further claimed that a second company had not provided complete information

on sales transactions. Finally, the Indian exporter claimed that two of the companies in the sample mainly manufactured high performance leisure ropes, which could not be considered to compete with the products sold by the Indian exporters in the Community, i.e. simple, commodity type ropes, at the lower end of the market.

(19) The selection of the sample of Community producers in the present investigation was based on levels of production and sales and geographical location, i.e. the same methodology as in the previous proceeding, which has not been disputed. It should be noted, in this context, that some of the companies selected in the previous proceeding no longer produced the product concerned at the time of the initiation of the present proceeding. The companies in the sample accounted for 47 % of production and 44 % of sales on the Community market of the product concerned by the Community industry during the investigation period. Moreover, the sample included large as well as small companies and producers from several Member States. These companies are therefore representative of the Community industry, in the meaning of Article 17 of the Basic Regulation.

(20) With regard to the allegations made in relation to certain companies included in the sample, it was found that one company had indeed suffered a fire. However, the production facilities of this company had not been damaged and any effects from the fire on the financial performance of the company could be identified in its accounts and were duly excluded for the purposes of the injury findings. Concerning the second company referred to by the exporter and the allegation that it had provided insufficient information, it should be noted that this company provided all information requested during the investigation. Finally, as to the allegation concerning the two companies producing high performance leisure ropes, it is noted that these ropes fall within the definition of the product concerned by this proceeding. Moreover, it was found that these two companies had significant production of standard ropes directly comparable to those sold by the Indian exporter.

Therefore, it is considered that the inclusion of the abovementioned Community producers in the sample is fully justified.

2. **Community consumption**

(21) In determining total apparent consumption on the Community market, the total sales of the Community producers were added to the imports into the Community.

(22) As explained in more detail in recital 23, the volume of imports was, for the purposes of the definitive findings, determined on the basis of Eurostat figures. This resulted in a change in consumption figures for the period considered (i.e. the period between 1993 and 31 May 1997). On this basis, Community consumption increased from 21 820 tonnes in 1993 to 26 325 tonnes in 1995 and remained relatively stable thereafter, reaching 26 773 tonnes in the investigation period, which represents an overall increase of 23 % over the period considered.

3. **Volume and market share of the dumped imports**

(23) The volume of the imports originating in India was determined, at the provisional stage, on the basis of information on export sales to the Community supplied by the cooperating Indian exporter as verified by the Commission.

Subsequent to the imposition of provisional measures, the cooperating Indian exporter contested this determination. It was claimed that part of the sales for export to the Community were not released for free circulation in the Community, but were put in bonded warehouses on Community territory partly for subsequent export sales to seagoing ships, without clearing customs. Consequently, it was requested that Eurostat statistics, rather than the sales volume reported by this company to the Commission, be used to determine the volume and market shares of the Indian imports.

(24) The Commission examined this issue. It should be noted that the quantities reported by the cooperating Indian exporter concerned as being sold in the Community, exceeded the import quantities reported by Eurostat, in particular in 1996 and during the investigation period. While at the provisional stage no importer cooperated in the investigation and the Commission based its conclusions on the information submitted by the Indian exporter, following the imposition of provisional measures a number of importers made information available to the Commission which showed that, during the investigation period some quantities purchased from the cooperating Indian exporter had, indeed, not been released into free circulation on the Community market.

In these circumstances, Eurostat appears to be a more reliable source of information for determining the volume of the Indian imports for the period examined than the export quantities reported by the cooperating Indian exporter. However, it was also found that, in the investigation period, part of the volumes stored in bonded warehouses on Community territory had not yet been resold and that these volumes could potentially be released for free circulation in the Community at very low prices.

In any event, it should be noted that both Eurostat figures and the sales volume reported by the cooperating Indian exporter indicate the same increasing trend in volume and market share for the Indian imports over the period considered. Overall, the revised volume of dumped imports increased by 107 % between 1993 and the investigation period (from 440 tonnes in 1993 to 1 089 tonnes in 1995 and then a decrease to 911 tonnes in the investigation period). The market share of these imports rose from 2 % in 1993 to 4,1 % in 1995, then decreased to 3,4 % in the investigation period. It should be noted that this relative decrease after 1995 coincided with the previous anti-dumping proceeding concerning this product.

4. **Prices of the dumped imports**

(25) The following comments were submitted with regard to the determination of price undercutting.

(26) The cooperating Indian exporter claimed that the determination of price undercutting should not have been made on the basis of the detailed export sales listing provided by this exporter to the Commission since a significant part of these export sales had not been released for free circulation in the Community. The exporter claimed that the average Eurostat prices should have been used instead. This claim also applied to the determination of the injury margin, which was based on the same export prices as those used for the undercutting assessment.

However, according to the information available (Eurostat), around 70 % of the total volume of sales made by the Indian exporter to the Community during the investigation period were released for free circulation in the Community. The prices of these export sales, which were verified by the Commission, were therefore considered to be representative of the actual prices of the imports concerned in the Community. Furthermore, no differences in export prices between individual transactions, whether or not destined for free circulation, could be determined.

In addition, given the existence of various types of ropes falling within the definition of the product concerned, average Eurostat prices would not have permitted a proper comparison of prices as they would have consisted of average values for greatly varying types of ropes.

Therefore, the claim was not considered to be justified.

It was further argued that, in any event, the export sales transactions concerning large polypropylene mooring ropes should be excluded from the undercutting and injury elimination level assessments, as these types of ropes were only sold to seagoing ships and therefore were never released for free circulation in the Community.

However, it was found that, in the investigation period, a significant volume of these types of ropes exported from India to the Community had subsequently been released for free circulation in the Community. Moreover, no sufficient information was submitted to the Commission to identify, among the total export transactions concerning these types of ropes, those which resulted in ropes being subsequently released in the Community. This argument could therefore not be taken into account.

(27) The cooperating Indian exporter also claimed that the method used by the Commission to differentiate between the various types of synthetic fibre ropes sold on the Community market, for the purposes of determining undercutting and the injury margin, did not take full account of the differences between high value and lower value commodity products.

In this respect, it is noted that the method used enabled a distinction to be made between the ropes on the basis of the type of raw material used, the number of strands, the diameter of the rope and the construction (braided or twisted). These were found to be the main identifiable and objective criteria on the basis of which the prices of the product concerned were determined, both by the sampled Community producers and by the Indian exporter concerned.

Therefore, the approach used at the provisional stage in order to determine price undercutting was also used for definitive findings.

(28) On this basis, as already indicated in recital 24 of the provisional duty Regulation, it was found that, during the investigation period, price undercutting margins, expressed as a percentage of the Community industry's average selling prices of comparable product types, ranged from 0 % to 38 %, with an overall weighted average of 16 %.

5. **Situation of the Community industry**

(29) The cooperating Indian exporter submitted that the decline in employment observed during the period considered could not be an indicator of injury because it was compensated for by an improvement in productivity. It was also argued that, according to

the Commission's findings in the previous proceeding concerning imports of synthetic fibre ropes originating in India, any decrease in employment up to 1995 was due to factors other than the dumped Indian imports.

It should be remembered that, in accordance with Article 3(5) of the Basic Regulation, no single injury factor can necessarily give decisive guidance on the impact of the dumped imports on the situation of the Community industry.

In this respect, it is not contested that in the early 1990s the decline in employment may have been due to factors other than dumped imports, such as the restructuring of the industry. However, it should also be noted that after a slight increase in 1996, employment levels were again on the decline in the investigation period. Moreover, in spite of the increase in productivity over the period considered, the Community industry suffered a significant loss in market share at a time when Community consumption had increased by 23 %. Furthermore, the Community industry showed a significant deterioration in its financial results from 1995 onwards, resulting in a weighted average loss of −7,1 % of net sales in the investigation period, and suffered significant price pressure from the Indian imports throughout the period considered, with price undercutting of up to 38 % during the investigation period.

6. **Conclusion on injury**

(30) In the absence of any other arguments concerning the situation of the Community industry and in the light of the above, the conclusion that the Community industry has suffered material injury within the meaning of Article 3(1) of the Basic Regulation, as stated in recitals 25 to 35 of the provisional duty Regulation, is hereby confirmed.

H. **CAUSATION OF INJURY**

1. **Effects of the dumped imports**

(31) The cooperating Indian exporter argued that any material injury suffered by the Community industry could not be attributable to imports originating in India. The following arguments were put forward.

(32) The overall loss of market share suffered by the Community producers was not due to the imports originating in India, but resulted from a shift by Community producers towards the production of specialised ropes, with a higher added-value, destined primarily for export markets. It was argued that, in this way, these producers created a vacuum in the supply of commodity ropes on the Community market which was filled, *inter alia,* by the Indian imports. In addition, it was stated that, in any event, the Community producers lacked the necessary production capacity to meet the growing demand of the Community market.

In this respect it should be noted that, although the Community industry was found to be developing production of ropes at the upper end of the market in terms of added-value and specialisation, the bulk of the production of the Community industry at the end of the investigation period still consisted of commodity type ropes.

Moreover, the Commission examined the evolution of the exports of the sampled Community producers over the period considered. It was found that this volume remained stable between 1993 and the investigation period, at around 1 900 tonnes, representing some 15 % of the total production of the sampled companies.

As regards the production capacity of the whole Community industry, it exceeded total Community consumption throughout the period considered (during the investigation period, total consumption was 26 700 tonnes, while total capacity was 36 000 tonnes).

The Community industry's loss of market share could not, therefore, be attributed to an increase in export sales, an insufficient offer of commodity type ropes nor to insufficient production capacity.

(33) Concerning the decrease in profitability suffered by the Community industry between 1995 and the investigation period, the cooperating Indian exporter argued that the decrease in raw material prices between 1995 and the investigation period should have resulted in increased profitability for the Community producers during this period. They therefore claimed that any decline in profitability in this period was due to increased overheads, in particular depreciation charges and interest expenses, as a result of the important investments made by the Community industry. In any event, it was argued that the drop in profitability could not be due to the Indian imports, which declined between 1995 and the investigation period.

It was found that between 1995 and the investigation period, the average prices of raw materials declined by approximately 11 %. Considering that raw materials account for approximately 50 % of the total costs of production of the product concerned, this decrease in raw material costs enabled the Community producers to reduce their costs of production by 5 %. However, over the same period, the average sales prices of the Community producers, under strong downward pressure from the prices of the Indian imports, declined by 16 %.

Furthermore, as regards the impact of the investments made by the Community industry on profitability, it was found that these had a marginal impact on the Community producers' costs of production during the period considered, mainly because any costs related with these new investments were compensated for by gains in productivity and by an overall reduction in other general and administrative expenses.

Finally, it should be noted that, despite the small decline in the imports originating in India between 1995 and the investigation period, these imports increased overall by 107 % during the period considered. Moreover, it was found that the prices of these imports undercut the Community producers' prices significantly throughout the whole period considered, including the period from 1995 onwards, thus exerting downward pressure on the sales prices of the Community producers, which declined dramatically, between 1995 and the investigation period, by 16 %.

The decline in profitability experienced by the Community producers between 1995 and the investigation period was therefore clearly linked to a major reduction in sales prices over that period, which in turn occurred at a time of significant price undercutting by the Indian imports in this commodity product market.

(34) The cooperating Indian exporter also argued that the Community producers suffered an inherent competitive disadvantage, because they purchased their raw materials at significantly higher prices than the Indian exporters. However, it should be noted that, if the Indian importers had not sold the product concerned at dumped prices, they would not have undercut the prices of the Community industry. The argument is therefore not relevant. In any event, it was found that the purchase prices of the cooperating Indian exporter's raw materials were approximately 14 % lower than those of the Community industry. Since raw materials account for 50 % of the full cost of production, this difference could only explain, at best, a difference in sales prices of up to 7 %, which is largely below the level by which the Indian imports undercut the Community producers' prices, i.e. up to 38 %, with a weighted average undercutting of 16 %.

(35) Finally, it was argued that, compared with the negative finding on causation made in the previous proceeding concerning imports of synthetic fibre ropes originating in India, there were no changed circumstances to explain a different finding in the present proceeding on the causal link between dumping and injury.

It should be recalled that, in the previous proceeding, dumping by the Indian exporters and injury to the Community industry were established. However, the information available at the time did not permit the determination of a clear causal link between the dumped imports and the injury suffered by the Community industry.

In the present case, in accordance with the consistent practice of the Community institutions, the injury examination covered a period of time of nearly five years, from 1993 to May 1997. It should be noted that this period partly coincided with the period examined in the previous proceeding.

However, compared with the previous proceeding, the present investigation has examined the impact of the imports over a longer period of time after the Indian imports appeared in significant volume. Indeed, the previous and present investigation periods ended respectively in March 1996 and in May 1997 and the increase in the imports concerned was particularly apparent after 1994. Moreover, reliable information on the development of profitability of the Community industry for the whole period considered, which was lacking in the previous case, was received in the present case.

Contrary to the previous investigation, it has therefore been possible to establish a causal link between the imports concerned and the material injury suffered by the Community industry.

2. **Effects of other factors**

Imports from other non-member countries

(36) The cooperating Indian exporter argued that imports from countries other than India were the cause of any material injury suffered by the Community industry. It was claimed, in particular, that the prices of imports of synthetic fibre ropes originating in Poland, the Czech Republic, Slovenia and Tunisia had undercut the prices of the Community producers throughout the period considered. Moreover, the Indian exporter claimed that the prices of these imports were lower than the Indian prices for the types which represented the majority of the total imports of synthetic fibre ropes originating in India to the Community, i.e. polyethylene and polypropylene ropes and that, therefore, any price pressure suffered by the Community industry was largely attributable to these imports and not to the Indian imports.

The Commission analysed the evolution of the imports of polyethylene and polypropylene ropes originating in Poland, the Czech Republic, Slovenia and Tunisia, as compared to Indian imports of the same types of ropes. This analysis showed that the average prices of the imports originating in Slovenia and Tunisia were at approximately the same

level of the Indian export prices throughout the whole period considered. Moreover, it was found that the imports originating in Slovenia and Tunisia, although increasing in the period considered, accounted for only 0,8 % and 1,3 % respectively of total Community consumption in the investigation period. Any impact of these imports should therefore be considered less significant as compared to the impact of Indian imports. As regards Poland, the average prices of the imports originating in Poland were found, at times, to be slightly lower than the Indian import prices. However, the overall market share held by these imports decreased from 2,6 % in 1993 to 2 % in the investigation period. As regards the Czech Republic, the market share held by the imports originating in this country went from 0,8 % in 1993 to 2 % in the investigation period. However, it was only in 1993 that the prices of these imports were found to be significantly lower than the prices of the imports originating in India. During the investigation period, the imports originating in the Czech Republic entered the Community market at approximately the same prices as the Indian imports.

Finally, it should be noted that, the comparison between the prices of the Indian imports and the prices of imports originating in Poland and the Czech Republic for all types of synthetic fibre ropes falling within the definition of the product concerned, i.e. not only polyethylene and polypropylene ropes, indicated that the Indian import prices were the lowest on the Community market for the whole period considered, except for 1993. This comparison is all the more representative, since it concerns the whole product concerned by the definition.

Therefore, the findings and conclusions on the effect of imports from countries other than India on the injurious situation of the Community industry, as stated in recital 41 of the provisional duty Regulation, are hereby confirmed.

3. **Conclusion on causation**

(37) In the light of the above, although it cannot be excluded that some of the imports originating in countries other than India may have had a negative impact on the situation of the Community industry, this impact was not such as to break the causal link between the injury suffered by the Community industry and the dumped imports originating in India. Therefore and in the absence of any new information, the conclusion that the imports of synthetic fibre ropes originating in India, taken in isolation, have caused material injury to the Community industry, as stated in recitals 36 to 43 of the provisional duty Regulation, is hereby confirmed.

(38) This conclusion is drawn in particular given the loss in market share of the Community industry, combined with a deterioration in profitability, which coincided with an increase in the volume and market share of Indian imports, at prices which constantly undercut those of the Community industry.

I. **COMMUNITY INTEREST**

(39) It was claimed that the conclusion on the Community interest in the provisional duty Regulation was not supported by factual evidence. In particular, it was argued that the Commission had not sought sufficient information on the impact of measures on the users, in order to support its conclusions concerning the Community interest.

It should be noted that the Commission contacted all known associations of users, in particular shipping and fishing vessel associations and all known distributors of the product concerned in the Community, as well as all known significant upstream industries. Only limited and general replies were received. Moreover, no additional substantiated comments were submitted from the abovementioned parties after the adoption of provisional measures.

(40) In the absence of any new information, the findings set out in recitals 44 to 52 of the provisional duty Regulation concerning Community interest, are hereby confirmed.

J. **DEFINITIVE DUTY**

1. **Injury elimination level**

(41) The cooperating Indian exporter argued that their export prices had to be adjusted for the purposes of the injury elimination level assessment, to take account of the difference in raw material prices between the Indian and the Community producers.

However, as stated in recital 53 of the provisional duty Regulation, the injury elimination level was determined on the basis of the costs of production of the Community industry plus a reasonable amount of profit. Any considerations of differences in costs of production between the Indian and Community producers are therefore irrelevant in this respect.

(42) Therefore, the method used by the Commission to establish the injury elimination level, as stated in recital 53 of the provisional duty Regulation, is hereby confirmed.

On this basis, the injury margin was found to be 53 % of the weighted average, net, free-at-Community frontier price, before duty. For companies which did not cooperate in the investigation, the injury margin was 82 %, as stated in recital 55 of the provisional duty Regulation.

Since the amount of duty adequate to remove the injury sustained by the Community industry is lower than the dumping margins found, the anti-dumping duty to be imposed should be based on the former, in accordance with Article 9(4) of the Basic Regulation.

2. **Type of definitive anti-dumping duty**

(43) An *ad valorem* duty appears to be the most appropriate measure given the high number of types of ropes involved.

K. **COLLECTION OF THE PROVISIONAL DUTY**

(44) Considering the conclusions on dumping and injury definitively established and that the rate of definitive duty is equal to that provisionally determined, the amounts secured by way of the provisional anti-dumping duty should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of synthetic fibre ropes falling within CN codes 5607 49 11, 5607 49 19, 5607 50 11 and 5607 50 19 originating in India.

2. The rate of duty applicable to the net, free-at-Community frontier price before duty shall be as follows:

Products manufactured by:

— Garware Wall Ropes Ltd: 53,0 % (additional TARIC code 8755),

— other manufacturers: 82,0 % (additional TARIC code 8900).

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

Article 2

The amount secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 18/98 shall be definitively collected at the duty rate definitively imposed.

Article 3

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 Luxembourg, 24 June 1998.

For the Council

The President

J. CUNNINGHAM