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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 397/2004

of 2 March 2004

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] ('basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

A. **PROCEDURE**

1. **Initiation**

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

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

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

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

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

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

2. **Sampling**

Exporters/producers

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

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ C 316, 18.12.2002, p. 6.

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

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

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

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

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

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

Community producers

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

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

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

3. **Investigation**

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

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

Community producers:

— Bierbaum Unternehmensgruppe GmbH & Co.KG, Germany,

— Descamps S.A., France,

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

— Vanderschooten S.A., France,

— Vincenzo Zucchi S.p.A., Italy;

Unrelated importers in the Community:

— Blanche Porte S.A., France,

— Richard Haworth, United Kingdom;

Exporters/producers in Pakistan:

— Gul Ahmed Textile Mills Ltd, Karachi,

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

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

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

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

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

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

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

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

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

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

2. Like product

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

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

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

C. **DUMPING**

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

(30) All six companies selected to be part of the sample have replied to the questionnaire. The pre-verification analysis of the replies submitted by these exporting producers showed that all of the selected exporting producers reported underestimated costs which resulted in unrealistic and abnormally high profits for sales of the product concerned to the Community. By comparing the export prices with the costs of production reported by each company, profits on sales of the product concerned to the Community ranged from more than 20 % to almost 40 % per company, expressed as a percentage of turnover, on average more than 30 %. These margins were furthermore in sharp contrast with the average negative profit margins (-9,4 % on turnover) reported by the same companies for sales of the product concerned to other countries, and they were also in contrast to the 1,6 % profit margin on turnover reported on average for exports of other textile products including very similar products (processed fabric, table linen, curtains) with similar cost structures, sold also to the same type of clients, or even to the same clients. It should also be noted that the audited accounts, for the IP or for a period covering most of the IP, of the companies concerned which are producers and sellers of almost exclusively textile products, showed on average an overall profit margin on turnover of approximately 5 %.

(31) Besides their conspicuous commercial unreasonableness, the reported profit rates for exports of the product concerned to the Community were furthermore strongly contradicted by all other information available on profit rates for the product concerned exported from Pakistan to the Community, including information made available by the sampled exporting producers themselves.

(32) In their injury submission, the exporting producers stated that the low profitability of bed linen is inherent to this industry, which is characterised by large volumes of production and very high competition. It was also specified that a profit margin of 2 % to 3 % should be considered as reasonable. Another exporting producer not selected in the sample submitted that a normal profit margin would be 2 % to 5 %. After disclosure, all exporting producers contested that such statements were made with regard to the profitability of their export sales of bed linen to the Community. They stated that these statements related to profit margins considered acceptable for sales by the Community industry. In this respect, it is noted that these statements (i) were made during a hearing; (ii) referred to the bed linen industry in general; and (iii) were furthermore confirmed by answers to specific questions on profitability of bed linen exports by Pakistani producers to the Community. Moreover, similar information was submitted by an independent agent acting for importers. It is furthermore a commonly known fact that the Community market of bed linen is indeed highly competitive and that as a result of the numerous players and the open market, profit margins reported by the Pakistani exporting producers could not be regarded as credible.

(33) All information available indicated that the reported profit figures were overestimated and given the fact that export prices were in line with Eurostat, there was a reasonable presumption that this was a consequence of an underestimation of the reported costs of production for the product concerned. This is all the more important in view of the fact that in the absence of representative sales on the domestic market, it was clear that normal value had to be constructed on the basis of costs of production.

Disruption of on-spot verifications

(34) The Commission has sought to verify the highly implausible figures reported in the replies to the anti-dumping questionnaire submitted by the six companies selected in the sample, in line with Article 16 of the basic Regulation.

(35) During the verification of the second company, the Commission has received an anonymous life threatening letter addressed personally to the officials carrying out the verifications. With regard to the specific, personal nature of the life threatening letter received by the Commission officials, the Commission considered that the necessary conditions to carry out the verifications were not met and that these circumstances significantly impeded the investigation. Consequently, the verification visits had to be interrupted.

(36) For these reasons, it was only possible to carry out a full verification at the premises of one exporting producer, while a partial verification was carried out at the premises of another exporting producer. The exports of these two companies represent more than 50 % of the total cif export value to the Community of the sampled exporting producers.

Results of the partial on-spot verifications

(37) The verification of the first company confirmed that misleading information was submitted regarding the company's costs and pricing policy. Despite submission by the company that detailed cost accounts for the product concerned were kept, it was alleged on spot that no such accounts or supporting documentation were available. Thus, no substantiating evidence, as normally kept in the companies' records, was provided which could have shown that the reported costs of the product concerned were indeed accurate and that such costs reasonably reflected the costs associated with the production and sale of the product concerned. Even when it was shown to the company that, on the basis of the information provided by the company itself, such evidence should exist, access to this evidence was denied. Moreover, information on costs of the like product exported to other countries was requested but not provided.

(38) Evidence was also found that the company's accounting records were not in line with the Generally Accepted Accounting Principles (GAAP) of Pakistan, in particular regarding inventory valuation. Furthermore, the company acknowledged on spot, and in line with other information available (see recital 32), that there was considerable competition on the Community market amongst different exporting countries, which further indicated that the high profit figures reported for sales of the product concerned by this company were indeed unreasonable.

(39) With regard to the partial verification visit carried out at the premises of the second company, it was found that the pricing policy for sales of bed linen to the Community and to other markets did not differ significantly, and could not result in such strongly different profit margins, as reported by the company. The profit margins reported for sales of the product concerned to the Community were by far exceeding the margins used in internal price settings and negotiations with customers. No evidence was provided which could have shown that sales of bed linen to the Community would generate profits so substantially different from the profits generated by sales to third countries. Moreover, information concerning the cost of production and stock valuation of the product concerned, which should have been available, could not be verified.

(40) In light of the events described in recital 35, the Commission was forced to conclude that the information provided by the remaining sampled exporting producers could not be verified, as the verification visits had to be interrupted.

(41) Article 18(1) of the basic Regulation stipulates that where it is found that an interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. The verification visits have not lifted the reasonable presumption that the information submitted by each of the other companies selected in the sample was false. Information regarding costs and profits of the product concerned could therefore not be accepted as reported, in so far as it could not be verified and the information available clearly indicated that these data were false. It had therefore to be concluded that there was non-cooperation in the sense of Article 18(1) of the basic Regulation by all companies selected in the sample.

(42) According to Article 17(4) of the basic Regulation, if there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, it should be noted that the threat received by the Commission officials has not been removed and that nothing indicated that this threat was restricted to the verification visits of the Commission officials to the sampled companies. It was therefore impossible for the Commission to select a new sample and to carry out verification visits. Consequently, a determination had to be made on the basis of facts available, in accordance with Article 18 of the basic Regulation.

(43) The exporting producers were informed of the finding that they had supplied false or misleading information, the reason for rejecting such false or misleading information and that best facts available would be used in accordance with Article 18 of the basic Regulation. They were granted an opportunity to provide further explanations within the time limit specified, as determined by Article 18(4) of the basic Regulation.

(44) According to Article 18(1) of the basic Regulation, false or misleading information shall be disregarded and use may be made of facts available. The Commission examined the information available that would allow to calculate the margin of dumping, i.e. the complaint, the questionnaire replies by the sampled exporting producers and three other exporting producers that had requested individual examination in line with Article 17(3) of the basic Regulation, information submitted by several interested parties and official import statistics from Eurostat.

(45) With regard the complaint lodged by the Community industry, which contained prima-facie evidence of a dumping margin of 45,1 %, it was found that the data used to calculate this dumping margin was less representative than the information supplied by the exporting producers, in particular regarding the multiple types of the product concerned exported from Pakistan.

(46) The replies to the anti-dumping questionnaire by the three companies requesting individual examination were also examined and it was found that they were significantly deficient and incorrect to such an extent that this would cause undue difficulty in arriving at a reasonably accurate finding.

(47) Consequently, it was considered that, on balance, despite containing some false information, the replies of the exporting producers initially collected in order to constitute a sample could, to a certain extent, be used as the best facts available. Obviously, this had to be corrected where contradicted by the findings of the on-spot verifications and the information provided by these parties in their further submissions.

(48) It should be noted that Article 18 of the basic Regulation provides that the result of the application of facts available may be less favourable to the party than if it had cooperated. However, given the fact that the dumping margin determined would apply to all Pakistani exporting producers of the product concerned, the Commission has taken utmost care to eliminate the punitive element for non-cooperation.

Need to calculate a global dumping margin

(49) The information submitted by interested parties, and used to correct the reported costs for each of the six initially sampled companies, contained references to an average profit margin on exports of the product concerned of 2 % to 5 %. This range was also confirmed by the exporting producers themselves, and was considered reasonable as described in recital 32. It was considered, however, that this profit margin, although valid on average for all the exporting producers, would not necessarily reflect the profit margin of each of the companies individually. In the light of the fact that the information available allowed the Commission only to calculate an average profit margin on exports of the product concerned it was considered appropriate to calculate one overall dumping margin applicable to all the exporting producers.

(50) The exporting producers claimed that an individual dumping margin should have been established for each company individually. It was stated that the calculations showed that the Commission was able to calculate an individual dumping margin.

(51) The need to calculate a global dumping margin is the result of the following considerations: The profit margins on export sales submitted by the exporting producers in their replies to the questionnaires could not be used and had therefore to be corrected. This correction was done by using for all exporting producers a profit margin on export sales of 3,5 % (the issue is explained in full in recital 56). This also meant that the allocations of cost of manufacturing of the product concerned as presented in the questionnaire replies were not correct and therefore had to be adjusted accordingly pursuant to Article 18 of the basic Regulation. Thus, the wrong reporting of the profit on export sales had important knock on effects on the cost allocations for each exporting producer. More importantly, the fact that an average profit margin had to be used as facts available for all exporting producers was a major reason for arriving at the conclusion that it would be inappropriate to specify individual duty rates for each individual exporting producer. Indeed, the very nature of an average profit margin entails that the corresponding individual profit margins will to some degree vary. In this case, the variation was important as the range of possible profit margins quoted differed from 2 % to 5 %. In other words, while the Institutions are reasonably satisfied that the average profit margin used is appropriate, this average profit margin is — given the important knock-on effects for the other elements of the constructed normal value and thus for the dumping calculations in general — clearly not a basis in order to specify an individual duty rate. This is so because it would lead to unjustifiably high dumping margins for some exporting producers and to unjustifiably low dumping margins for some other exporting producers as compared to a situation where the real individual profit figures, i.e. those established in the case of full cooperation, had been used. Thus, the fact that an average profit figure for export sales of the product concerned had to be used linked intrinsically the determinations of each separate producer.

(52) The exporting producers claimed that the fact that they have received disclosure with individual calculations and individual dumping amounts shows that the Institutions could also have specified individual duty rates for them. However, the issue that an individual duty rate is not appropriate for the reasons outlined above should not be confused with the information which was provided to each individual exporting producer in the framework of disclosure. Indeed, in order to ensure transparency and to enable each individual exporting producer to cross-check the calculations of the Commission, they all received the full calculation which reflected the above-mentioned profit margin of 3,5 %. But this does not put into question the reasons for a country wide dumping margin/duty rate as outlined in the preceding paragraph.

Normal value

(53) As the companies selected in the sample had no domestic sales of the like product representing at least 5 % of export sales of the product concerned to the Community, as required by Article 2(2) of the basic Regulation, the domestic sales of the like product by the companies concerned could not be used as a valid basis to determine normal value.

(54) In the absence of representative domestic sales made by other producers, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation, by adding to the manufacturing cost of the exported types of the product concerned a reasonable amount for selling, general and administrative costs ('SG&A') and for profit, determined according to Article 2(6) of the basic Regulation.

(55) As concluded in recital 41, it was found that the reported costs of production and, as a consequence, the reported profit margins for exports of the product concerned were false.

(56) Of the reported costs of production, only the costs of manufacturing were corrected, as the reported SG&A expenses were found to be in line with the companies' audited accounts. The profit on exports of the product concerned for each company initially selected for the sample was corrected to 3,5 % of turnover, an average of the profit margins submitted to be the normal profit margin for these sales. The amount of profit reduction on exports of the product concerned was allocated on the basis of turnover to export sales of other products

and to domestic sales, in order to keep the overall profit in line with the companies' audited accounts.

(57) It was argued by the exporting producers and by two associations that it was unreasonable to consider such profit as a reasonable profit for Pakistani exports to the Community market, while at the same time considering a profit margin of 6,5 % as an appropriate minimum for the Community industry.

(58) As stated in recital 105, the investigation revealed that exports from Pakistan were strong on the low price segment, while Community industry sales covered mainly branded products. It was therefore considered that on the basis of these factors such difference in profitability was not unreasonable.

(59) A number of corrections had to be introduced to the cost allocation methods which the companies had elaborated exclusively for the purpose of the present investigation, including the allocation of duty drawback and packing expenses, on the basis of the findings of the on spot verifications and the analysis of the replies.

(60) For the company which was fully verified, a correction to the reported profit on domestic sales was also necessary in order to bring it into line with GAAP applied in Pakistan.

(61) Since no actual data for SG&A and profit pertaining to production and sales of the like product were available for any of the exporting producers under investigation or for any other known exporters or producers, and since no such information was available for the same general category of products, there was no other option but to use any other reasonable method according to Article 2(6)(c) of the basic Regulation to establish an amount for SG&A and for profits.

(62) In order to determine an amount for SG&A expenses and for profit, the average of the amounts reported by all six companies originally selected in the sample for SG&A expenses and for profit on domestic sales to unrelated customers, after the corrections as explained in recitals 56 and 60, were used. These data were considered an appropriate basis since they related to domestic sales to unrelated customers of textile products (including yarn, grey fabric, processed fabrics and apparel) and they were the only data available for domestic sales in Pakistan. No information is available which would allow to conclude that the profit so determined exceeds the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of Pakistan, as required by Article 2(6)(c) of the basic Regulation.

Export price

(63) The appropriateness of the export prices as reported by the exporting producers was examined. All the information available, including the partial verification carried out in Pakistan, verifications of importers and Eurostat statistics indicated that these were accurately reported.

(64) All companies made their export sales to the Community directly to independent importers. In accordance with Article 2(8) of the basic Regulation, their export prices were therefore established on the basis of the prices actually paid or payable by these independent importers.

(65) As requested by the companies concerned, export sales made from outdated stocks and sales delivered by air mail were excluded from the dumping calculations, as these sales were allegedly not made in the ordinary course of trade. These sales represented a negligible proportion of all export sales reported.

Comparison

(66) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for import charges and indirect taxes, discounts and rebates, transport, insurance, handling, loading and ancillary costs, packing, credit, commissions and currency conversions, affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(67) All companies have claimed an adjustment for duty drawback under Article 2(10)(b) of the basic Regulation. However, the amounts refunded by the Pakistani government exceeded by far the amounts of import charges or indirect taxes paid on materials incorporated in the product concerned. Consequently, the Commission accepted the adjustment in so far as the amounts claimed were actually borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country, and refunded in respect of the product exported to the Community.

(68) The exporting producers argued that the duty drawback allowance should be granted for the full amount refunded by the Government of Pakistan independently of whether duties had been paid by the exporting producers or by their local suppliers of materials. However, no evidence was available that the materials bought from local suppliers did bear any import charges or indirect taxes. The argument was therefore rejected.

Dumping margin

(69) According to Article 2(11) of the basic Regulation, the amount of dumping was established on the basis of the comparison of the weighted average normal value of each product type with the weighted average export price of the same product type.

(70) On this basis, the overall average dumping margin applicable to all Pakistani exporting producers is 13,1 %, expressed as a percentage of the cif net free-at-Community-frontier price, before duty.

D. COMMUNITY INDUSTRY

(71) Within the Community, the product concerned is manufactured by:

— producers on behalf of which the complaint was lodged; all producers which were selected in the sample ('the sampled Community producers') were also complainants,

— other Community producers which were not complainants and did not cooperate.

(72) The Commission has assessed whether all the above companies could be considered as Community producers within the meaning of Article 4(1) of the basic Regulation. The output of all the above companies constitutes the Community production.

(73) The Community industry is composed of 29 Community producers which cooperated with the Commission, among which are also the five sampled Community producers. These producers account for 45 % of the Community production of cotton-type bed linen. They are therefore deemed to constitute 'the Community industry' within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

E. INJURY

1. Preliminary remarks

(74) In view of the fact that sampling had been used with regard to the Community industry, injury has been assessed on the one hand on the basis of information collected at the level of the entire Community industry, for trends concerning production, productivity, sales, market share, employment and growth. On the other hand, information collected at the level of the sampled Community producers was analysed, as regards trends concerning prices and profitability, cash flow, ability to raise capital and investments, stocks, capacity and utilisation of capacity, return on investment and wages.

2. Community consumption

(75) Community consumption was established on the basis of production volumes of the Community producers according to Eurocoton minus exports based on Eurostat data, plus imports from Pakistan and the other third countries, also based on Eurostat. Between 1999 and the IP, the apparent Community consumption increased steadily from 173 651 tonnes to 199 881 tonnes, i.e. by 15 %.

3. Imports from the country concerned

(a) *Volume and market share*

(76) Imports of cotton-type bed linen from Pakistan into the Community increased in volume from 36 000 tonnes in 1999 to 49 300 tonnes in the IP, i.e. by 37 % over the period considered. After a drop to 31 800 tonnes in 2000 imports bounced back to 35 500 tonnes in 2001. Between 2001 and the investigation period they rose sharply by almost 14 000 tonnes; i.e. by more than one third.

(77) The corresponding market share decreased from 20,7 % in 1999 to 17,2 % in 2000. Subsequently, it rose to 18,9 % in 2001 and 24,7 % during the IP.

(b) *Prices*

(78) Average prices from Pakistan increased from 5,95 EUR/kg in 1999 to 6,81 EUR/kg in 2000. In the following years they were reduced gradually to 6,34 EUR/kg in 2001 and to 5,93 EUR/kg during the IP.

(c) *Price undercutting*

(79) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Community industry to unrelated customers on the Community market were compared to the corresponding weighted average export prices of the imports concerned. The comparison was made after deduction of rebates and discounts. The prices of the Community industry were adjusted to an ex-works basis. The prices of the imports concerned were on a cif basis with an appropriate adjustment for the customs duties and post importation costs.

(80) This comparison showed that during the IP the products concerned originating in Pakistan were sold in the Community at prices which undercut the Community industry's prices by more than 50 %, when expressed as a percentage of the latter.

4. Situation of the Community industry

(81) In accordance with Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

(82) It was analysed whether the Community industry is still in the process of recovering from the effects of past subsidisation or dumping, but no evidence was found that this should be the case.

(83) It was submitted that the Community industry did not suffer material injury as it was protected by the presence of quotas. It is indeed true that during the IP there were quotas in force. Under international law, these quotas have their legal basis in the WTO Agreement on Textiles and Clothing. They will be phased out by 31 December 2004. The quantities which can be imported under the quotas correspond to substantial shares of the Community market. Indeed, on the basis of consumption figures in the IP the annual 2002 quota corresponds in the case of Pakistan to a market share of around 25 %. It should also be noted that the determination of the level of these textile quotas is the result of straightforward negotiations which are outside the analytical framework foreseen under the basic Regulation. Whilst it cannot be excluded that quotas might have an effect on the situation of the Community industry, the mere presence of quotas does not prevent the Community industry to suffer injury. The analysis of the figures in the present case shows that the Community industry suffered material injury during the IP despite the presence of the quotas. The submission is therefore rejected.

(a) *Data relating to the Community industry as a whole*

— Production, employment and productivity

(84) The production volume of the Community industry increased slightly between 1999 and the IP, from 37 700 tonnes to 39 500 tonnes, i.e. by 5 %.

(85) Employment remained basically stable around 5 500 employees. Therefore, productivity increased from 6,8 tonnes/employee in 1999 to 7,2 tonnes/employee during the IP, i.e. by 6 % over the period considered.

— Sales volume and market share

(86) Over the period considered, the sales volume of the Community industry rose by 4 %, from 36 200 tonnes in 1999 to 37 800 tonnes during the IP. It had increased to 38 300 tonnes in 2001, but decreased in the IP. The turnover generated by these sales increased from EUR 410 Mio in 1999 to EUR 441 Mio in 2001, but subsequently decreased by 5 percentage points to EUR 420 Mio during the IP.

(87) Despite the fact that consumption in the Community market increased by 15 % during the same period, the Community industry's market share declined from 20,8 % to 18,9 % during the IP. The market share fluctuated around 20 % between 1999 and 2001 and decreased by 1,5 percentage points between 2001 and the IP.

— Growth

(88) While Community consumption grew by 15 % between 1999 and the IP, the sales volume of the Community industry rose by only 4 %. On the other hand, the volume of total imports rose by 35 % over the same period, with the most significant increase from 120 000 tonnes in 2001 to 139 000 tonnes during the IP. While the market share of all imports increased by more than 10 percentage points, the market share of the Community industry dropped from 20,8 % to 18,9 %. This means that the Community industry could not participate adequately in the growth of the market between 1999 and the IP.

(b) *Data relating to the sampled Community producers*

— Stocks, capacity and capacity utilisation

(89) As far as stocks are concerned, they fluctuate considerably because most of the production is made in response to orders thus reducing the possibility to produce purely for stocks. Whilst an increase in stocks was observed at the sampled Community producers, it is considered that in this case stocks were not a relevant indicator of injury due to the industry specific high fluctuations of stocks.

(90) The production capacity was difficult to establish in nearly all sampled Community producers because the production process of the like product is individualised requiring different combinations of machinery usage. Therefore, it is impossible to draw an overall conclusion from the capacity of individual machines concerning the production capacity. In addition, part of the production process is sub-contracted in some of the sampled Community producers.

(91) However, for those products that go through a printing process, the printing department was considered to be the factor determining the capacity relating to production of the printed bed linen in all sampled Community producers. It was found that the capacity utilisation in the printing department decreased steadily from 90 % to 82 %.

— Prices

(92) Average prices per kg of the sampled Community producers increased gradually from EUR 13,3 to EUR 14,2 over the period considered. This should be seen in the light of the fact that this average price covers both high value and low value items of the product concerned and that the Community industry has been forced to shift to more sales of higher value niche products as their sales in the high volume, mass market were taken over by imports from low price countries. On the other hand, average sales prices per kg of the Community industry overall went up marginally from EUR 11,3 in 1999 to EUR 11,5 in 2001, but dropped subsequently to EUR 11,1 during the IP.

— Investments and ability to raise capital

(93) Between 1999 and 2001, investments were reduced significantly from EUR 7 Mio to EUR 2,5 Mio. Between 2001 and the IP, investments remained rather stable and accounted during the IP for only 41 % of the amount invested in 1999.

(94) There was no claim from the Community industry nor indication that the Community industry encountered problems to raise capital for its activity.

(95) It was submitted that the decrease in investments does not point to injury as the Community industry did not claim to encounter problems in raising capital. This argument had to be rejected as the decline in new investments is not linked to difficulties in raising capital, but it was caused by the loss in market share of the Community industry and by the fierce price pressure in the Community market.

— Profitability, return on investment and cash flow

(96) Over the period considered, the profitability of the sampled Community producers dropped significantly from 7,7 % in 1999 to 4,4 % in the IP, i.e. by 42 %. The return on investment followed the same trend, falling from 10,5 % in 1999 to 5,9 % during the IP, a reduction by 44 %.

(97) It was submitted by the Pakistani exporting producers that the decline in profitability in the five sampled producers corresponds to the increase in wages. As outlined below, the average labour costs of the sampled companies have decreased in real terms by around 3,6 %. In addition, wages are only one out of several cost items in the manufacturing process and therefore, an increase in wages does not constitute automatically a decrease in the profitability of a company. Therefore, this argument had to be rejected.

(98) The cash flow generated by the like product diminished considerably from EUR 16,8 Mio in 1999 to EUR 11,3 Mio during the IP. The most significant reduction occurred in 2000, when the cash flow decreased by 27 %. Between 2000 and the IP, it fell by another 5 %. As the cash flow was influenced by stock variations, cash flow is an indicator with a limited relevance. Nevertheless, is should be noted that the negative development of cash flow over the period considered is in line with other economic indicators, confirming the negative evolution of the Community industry, and should not be qualified as insignificant.

— Wages

(99) Labour costs increased by 3,3 % over the period considered, from EUR 35,2 Mio in 1999 to EUR 36,3 Mio during the IP. As the number of employees remained basically stable, average labour costs also increased from EUR 29 100 (rounded figures) to EUR 30 300, i.e. by 4,2 %. These increases are nominal increases and are considerably below the increase in consumer prices of more than 7,8 % over the period considered, which means that real wages have decreased by 3,6 %.

— Magnitude of the amount of dumping

(100) Given the volume and the price of the dumped imports, the impact of the actual margin of dumping, which is also significant, cannot be considered negligible.

5. **Conclusion on injury**

(101) The examination of the abovementioned factors shows that between 1999 and the IP, the situation of the Community industry deteriorated. The profitability fell significantly over the period considered and the Community industry's market share decreased by 9,1 %. For the sampled Community producers, investments were significantly reduced, profitability, return on investment as well as cash flow decreased considerably. Employment remained basically stable. Some indicators showed a positive trend: over the period considered, turnover and sales volumes of the Community industry increased slightly. Productivity and wages increased marginally. As regards average sales prices of the sampled producers, they showed an upward trend over the period considered, which is, however, partly a result of a shift to more sales of higher value niche products. However, it should be noted that during the same period the Community consumption grew by 15 % whilst the Community industry's market share declined by 9,1 %. Moreover, the average sales prices of the Community industry decreased over the period considered.

(102) In the light of the foregoing, it is concluded that the Community industry has suffered material injury within the meaning of Article 3(6) of the basic Regulation.

F. **CAUSATION**

1. **Introduction**

(103) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the dumped imports originating in Pakistan have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(104) Imports of cotton-type bed linen from Pakistan into the Community increased in volume from 36 000 tonnes in 1999 to 49 300 tonnes in the IP, i.e. by 37 %. After a slight decrease between 1999 and 2000, imports recovered in 2001 and rose by 13 900 tonnes between 2001 and the IP. The corresponding market share fell initially from 20,7 % in 1999 to 17,2 % in 2000. Subsequently, it went up considerably amounting to 24,7 % during the IP.

(105) In the analysis of the effect of the dumped imports, it was found that price is the main element of competition. Indeed, it is the buyers who determine themselves the quality and design of the product which they intend to order. It appears from the analysis of the selling-buying process in this case that the importers and traders, before passing an order to an exporting producer in Pakistan, specify all the characteristics of the product (design, colour, quality, sizes…) to be delivered, and thus compare the different producers' offers mainly on the basis of price as all other differentiating elements are predetermined in the call for offers, or subsequently result from the importer's own efforts in respect of similar goods (e.g. branding). With respect to prices, it was found that the prices of dumped imports were considerably below those of the Community industry as well as below those of other third country exporters. Moreover, it was also found that the Community industry had to withdraw largely from the low priced market segments, where imports from Pakistan are strong, this also underlining the causal link between the dumped imports and injury suffered by the Community industry.

(106) Average prices of imports from Pakistan exerted a pressure on the Community industry and forced it on the one hand to decrease prices and on the other hand to shift to more sales of higher value niche products.

(107) Given the impact of the imports from Pakistan in the Community market, both in terms of volume and in terms of prices, these imports exerted a significant downward pressure on the Community industry in terms of its sales volumes and prices. The lack of sales volume in the low priced market segments for the Community industry could not be compensated by sales of high profit niche products, this resulting in reducing notably market share, investments, profitability and return on investment of the Community industry. It was also found that there was a coincidence in time between these imports and the injury suffered by the Community industry.

3. **Effects of other factors**

(a) *Subsidised imports originating in India*

(108) In the parallel anti-subsidy investigation, it was established that subsidised imports originating in India caused material injury to the Community industry. Although subsidised imports originating in India are, therefore, considered as having contributed to the injury suffered by the Community industry, it should be noted that, given the substantial and increasing volumes and low prices of imports originating in Pakistan, it cannot be denied that dumped imports from Pakistan equally caused material injury by themselves.

(b) *Imports originating in third countries other than India and Pakistan*

(109) Imports originating in third countries other than India and Pakistan increased from 51 400 tonnes in 1999 to 75 300 tonnes during the IP. Their market share increased from 29,6 % in 1999 to 37,7 %. The largest part of imports in that group of countries originated in Turkey. Given the corporate links between Turkish and Community companies, there is a certain market integration in the form of inter-company trade between Turkish exporting producers and Community operators that suggests that the decision to import from that country is not only linked to the price. This is confirmed by the average prices of imports of bed linen originating in Turkey during the IP, which were higher by almost 45 % to those of India and by 34 % to those of Pakistan. It is therefore unlikely that imports originating in Turkey broke the causal link between the dumped imports from Pakistan and the injury suffered by the Community industry.

(110) The market shares of the remaining countries (e.g. Romania, Bangladesh and Egypt) individually are significantly lower and do not exceed 3,9 %, and it is thus unlikely that any material injury is to be attributed to the imports from those countries.

(111) The average price of imports originating in countries other than India and Pakistan increased from 7,18 EUR/kg in 1999 to 7,47 EUR/kg in 2001 and decreased slightly to 7,40 EUR/kg during the IP. Nevertheless, during the IP, these prices were around 25 % higher than the prices of imports from Pakistan. Consequently, imports from other third countries did not exert a price pressure on the Community industry to the extent that imports from Pakistan did. Also the market share of any individual country in that group was below 4 %. It is therefore concluded that imports from other third countries did not break the causal link between the dumped imports from Pakistan and the injury suffered by the Community industry.

(c) *Contraction of demand*

(112) It was claimed that the demand for bed linen produced by the Community industry has diminished in volume terms as the Community industry focused on the upper end of the market, where less sales volume is made. However, as pointed out above, the total EU consumption of bed linen did not decrease, but rather increased over the period considered. Most of the Community producers have different product lines for different

market segments. The up-market brands generate high margins but are only sold in very small quantities. In order to maximise the capacity utilisation and to cover the fixed costs of production, the Community industry would need sales of lower priced market segment in big volumes as well. There is no indication that demand has decreased in that market segment. This segment is on the other hand increasingly taken over by low priced imports, which cause injury to the Community industry. Given the overall increase in consumption, which is not limited to a particular market segment, the demand situation in the Community can therefore not be seen to break the causal link between the dumped imports from Pakistan and the injury suffered by the Community industry.

(d) *Imports by the Community industry*

(113) It was submitted that the Community industry imported cotton-type bed linen from Pakistan and thereby contributed to the injury suffered. However, only one of the sampled Community producers actually imported bed linen from Pakistan during the IP and the sales of these imports generated only a small part of total turnover by this producer (around 2 %). Therefore, imports by the Community industry of the product concerned from Pakistan cannot be seen to break the causal link between the dumped imports from Pakistan and the material injury suffered by the Community industry as a whole.

(e) *Export performance by the Community industry*

(114) Exports of the sampled Community producers represented only around 0,5 % of their total sales. Given the negligible part of exports in total activity, this factor cannot have contributed to the injury suffered.

(f) *Productivity of the Community industry*

(115) The development in productivity has been identified in the injury part of this document. Since productivity increased from 6,8 tonnes/employee in 1999 to 7,2 tonnes/employee in the IP, i.e. by around 6 %, this factor cannot have contributed to the injury suffered.

4. **Conclusion**

(116) The substantial increase in volume and market share of the imports originating in Pakistan, especially between 2001 and the IP, as well as the considerable decrease in their sales prices and the level of price undercutting found during the IP coincided in time with the material injury suffered by the Community industry.

(117) In the parallel anti-subsidy investigation, it was established that subsidised imports originating in India contributed to the injury suffered by the Community industry. However, the effect of these imports was not such as to reverse the conclusion of causation as regards the dumped imports originating in Pakistan. The remaining possible other injury causes, i.e. imports from countries other than India and Pakistan, the demand situation, imports made by the Community industry as well as the export and productivity performance were analysed, but found not to break the causal link between the Pakistani imports and the injury suffered by the Community industry.

(118) Based on the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is concluded that the imports from Pakistan have caused material injury to the Community within the meaning of Article 3(6) of the basic Regulation.

G. **COMMUNITY INTEREST**

1. **General remarks**

(119) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the conclusion on injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. The impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered.

2. **Community industry**

(120) The Community industry suffered material injury. It proved to be a viable industry that was able to compete at fair market conditions. The injurious situation of the Community industry resulted from its difficulty to compete with the low-priced, dumped imports. The pressure of the dumped imports has also forced a number of Community producers to cease production of cotton-type bed linen.

(121) It is considered that the imposition of measures will restore fair competition on the market. The Community industry should then be able to increase the volume and prices of its sales, thereby generating the necessary profit level to justify continued investment in its production facilities.

(122) Should measures not be imposed, the deterioration of the situation of the Community industry would continue. It would not be able to invest in new production capacity and to compete effectively with imports from third countries. Some companies would have to cease production and lay off their employees.

(123) It is therefore concluded that the imposition of anti-dumping measures is in the interest of the Community industry.

3. **Importers and users**

(124) Questionnaires were sent to 17 importers and two associations of importers. Only two questionnaire replies were received from unrelated importers in the Community.

(125) For both importers the sales of the product concerned constituted less than 5 % of the total turnover. The total profitability of the importers was between 2 % and 10 %. Taking into account that only a small share of the turnover of the two importers is generated by sales of the product concerned imported from Pakistan and that many countries are not concerned by either anti-dumping duties or countervailing duties, the impact of the imposition of anti-dumping duties on these importers can be considered as minor.

(126) Questionnaires were sent to six users and one users' association. No information from users was received, but some arguments were raised in a submission by Ikea and by the Foreign Trade Association.

(127) It was submitted that the Community industry is not in a position to satisfy the whole demand for bed linen in the Community. It has to be recalled that measures are not intended to prevent imports into the Community but to ensure that they are not made at injurious dumped prices. Imports from various origins will continue to satisfy a significant part of the Community demand. As many countries are not concerned by anti-dumping duties or countervailing duties, no shortage of supply is expected.

(128) It was claimed that cheap imports of bed linen are necessary for the final consumer as well as 'institutional' users such as hotels, hospitals etc. as products of the cheaper end of the range are not produced by the Community producers. The investigation showed that the five sampled Community producers still produce these products. There was no technical reason why the production of these products in the Community could not be increased. The fact that many other countries are not concerned by anti-dumping duties or countervailing duties means that alternative sources of supply will still be available.

4. **Conclusion on Community interest**

(129) On the basis of the above, it is concluded that there are no compelling reasons on the grounds of Community interest why anti-dumping duties should not be imposed in the present case.

H. **ANTI-DUMPING MEASURES**

1. **Definitive measures**

(130) In order to prevent further injury being caused by the dumped imports, it is considered appropriate to adopt anti-dumping measures.

(131) For the purpose of determining the level of these duties, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

(132) Taking into account the level of profitability obtained by the Community industry in the years 1999 and 2000, it was found that a profit margin of 6,5 % of turnover could be regarded as an appropriate minimum which the Community industry could have expected to obtain in the absence of injurious dumping. The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry by the actual loss/profit made during the IP and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

(133) It was submitted by the Pakistani exporting producers that the profit margin of 6,5 % of turnover was higher than appropriate minimum profit established in other investigations concerning the same product. This argument had to be rejected as the appropriate minimum profit which the Community industry could have expected to obtain in the absence of injurious dumping is established anew on the basis of the specific circumstances of each proceeding, taking into account the market conditions and the past performance of the Community industry in that proceeding. In this case, it was found that a profit margin of 6,5 % could be regarded as an appropriate minimum, calculated as an average of the level of profitability obtained by the Community industry in the years 1999 and 2000.

(134) As the injury elimination level was higher than the dumping margin established, the definitive measures should be based on the latter.

2. **Undertaking**

(135) The Pakistani exporting producers have presented a proposal for a price undertaking. However, there were more than 170 exporters involved in this proceeding and bed linen is characterised by hundreds of different product types, with some characteristics not easily discernible upon importation. This makes it virtually impossible to establish meaningful minimum prices for each product type which could be properly monitored by the Commission. The large number of exporters would also render the monitoring of a price undertaking impracticable.

(136) It was also found that the proposed categories of the product concerned in respect of which an undertaking was offered were inappropriate since there would be a significant price variation within each of them. Furthermore, the proposed prices did not eliminate the injurious dumping.

(137) Under these circumstances, it was considered that a price undertaking was impracticable and could not be accepted,

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 Pakistan currently classifiable within CN codes ex 6302 21 00 (TARIC codes 6302 21 00*81 and 6302 21 00*89), ex 6302 22 90 (TARIC code 6302 22 90*19), ex 6302 31 10 (TARIC code 6302 31 10*90), ex 6302 31 90 (TARIC code 6302 31 90*90) and ex 6302 32 90 (TARIC code 6302 32 90*19).

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, for products produced by all companies shall be 13,1 %.

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

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 2 March 2004.

For the Council

The President

M. CULLEN