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

(OJ L 12, 17.1.2004, p. 1)

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# COUNCIL REGULATION (EC) No 74/2004

## of 13 January 2004

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ([1]), and in particular Article 15 thereof,

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

Whereas:

### A. **PROCEDURE**

#### 1. **Initiation**

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

(2) The proceeding was initiated following a complaint lodged in November 2002 by the Committee of the Cotton and Allied Textile Industries of the European Communities (Eurocoton or 'the complainant') on behalf of producers representing more than 25 % of the total Community production of cotton-type bedlinen. The complaint contained prima facie evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-subsidy proceeding.

(3) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 (the basic Regulation), the Commission notified the Government of India (GOI) that it had received a properly documented complaint alleging that subsidised imports of cotton-type bedlinen originating in India were causing material injury to the Community industry. The GOI was invited for consultation with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with the GOI were subsequently held with the Commission at its offices in Brussels, where no conclusive evidence was provided by the GOI which could refute the allegations made in the complaint. However, due note was taken of comments made by the GOI with regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

(4) The Commission officially advised the exporting producers and importers known to be concerned as well as their associations, the representatives of the exporting country concerned, the complainant and the other Community producers, known associations of producers as well as known users, of the initiation of the proceeding. Interested parties were given the opportunity to make

([1]) OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).

([2]) OJ C 316, 18.12.2002, p. 10.

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their views known in writing and to request a hearing within the time limits set in the notice of initiation.

(5) It was submitted that more than 45 days had lapsed between the lodging date and the initiation date. Pursuant to Article 10(13) of the basic Regulation, a complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission. The issuing of the acknowledgement of receipt took place on Thursday, 31 October 2002. Considering that Friday, 1 November was a public holiday, the first working day following the issuing of the acknowledgement of receipt by the Commission was Monday, 4 November 2002. Therefore, 4 November 2002 is to be considered as the lodging date of the complaint. The notice of initiation was published on 18 December 2002, which is clearly within 45 days of the lodging of the complaint. Consequently, the notice of initiation was published within the deadline of Article 10(13) of the basic Regulation.

2. **Sampling**

SAMPLING OF EXPORTERS/PRODUCERS IN INDIA

*General*

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

(7) In order to enable the Commission to select a sample, pursuant to Article 27(2) of the basic Regulation, exporters and representatives acting on their behalf were requested to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic turnover, on some particular subsidy schemes, and the names and activities of all related companies. The authorities of India were also contacted in this context by the Commission.

*Preselection of the sample*

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

(9) The companies not finally retained in the sample were informed that any anti-subsidy duty on their exports would be calculated in accordance with Article 15(3) of the basic Regulation, i.e. without exceeding the weighted average amount of countervailable subsidies established for the companies in the sample.

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

*Selection of the sample*

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

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

*Individual examination of the companies not selected in the sample*

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

SAMPLING OF COMMUNITY PRODUCERS

(14) In view of the large number of Community producers supporting the complaint, and in accordance with Article 27 of the basic Regulation, the Commission announced in the notice of initiation its intention to select a sample of Community producers, based on the largest representative volume of production and sales of the Community industry, which could be reasonably investigated within the time available. For these purposes, the Commission requested companies to provide information concerning production and sales for the like product.

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

(16) Two out of these five companies, which were among the smaller ones, were not able to submit a complete list of all transactions to unrelated customers during the investigation period and were therefore considered to be only partially cooperating.

3. **Investigation**

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

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

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

*Community producers:*

— Bierbaum Unternehmensgruppe GmbH & Co. KG, Germany;

— Descamps SA, France;

— Gabel industria tessile SpA, Italy;

— Vanderschooten SA, France;

— Vincenzo Zucchi SpA, Italy;

*Unrelated importers in the Community:*

— Richard Haworth, United Kingdom;

*Exporters/producers in India:*

— The Bombay Dyeing and Manufacturing Co., Mumbai

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— Brijmohan Purusottamdas, Mumbai

— Divya Textiles, Mumbai

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

— Mahalaxmi Exports, Ahmedabad

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

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

— Pasupati Fabrics, New Delhi

— Prakash Cotton Mills Pvt., Ltd, Mumbai

— Texcellence Overseas, Mumbai

— Vigneshwara Exports Limited, Mumbai

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

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

## B. **Product concerned and Like Product**

### 1. **Product concerned**

(22) The product concerned is bedlinen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed originating in India, currently classifiable within CN codes ex 6302 21 00 (TARIC codes 6302 21 00 81, 6302 21 00 89), ex 6302 22 90 (TARIC code 6302 22 90 19), ex 6302 31 10 (TARIC code 6302 31 10 90), ex 6302 31 90 (TARIC code 6302 31 90 90) and ex 6302 32 90 (TARIC code 6302 32 90 19). Bedlinen includes bed sheets (fitted or flat), duvet covers and pillow covers, packaged for sale either separately or in sets. All product types are similar in their essential physical characteristics and in their uses. They are therefore considered to be one product.

### 2. **Like product**

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

## C. **SUBSIDISATION**

### 1. **Introduction**

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

(i) Duty Entitlement Passbook (DEPB) scheme

(ii) Duty-Free Replenishment Certificate (DFRC)

(iii) Export Promotion Capital Goods (EPCG) scheme

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(iv) Advance Licence Scheme (ALS)

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

(vi) Income Tax Exemption (ITES).

(25) The schemes (i), (ii), (iii), (iv) and (v) specified in recital 24 are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in the 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. Two Export and Import Policy documents are relevant to the IP of this case; i.e. the five-year plan relating to the period 1 April 1997 to 31 March 2002, and the five-year plan relating to the period 1 April 2002 to 31 March 2007. In addition, the GOI also sets out the procedures governing India's foreign trade policy in the Handbook of Procedures — 1 April 2002 to 31 March 2007 (Volume 1). A similar Handbook of Procedures exists for the period 1 April 1997 to 31 March 2002. The Handbook of Procedures is also updated on a regular basis.

(26) It was established at the verification visit to the GOI that there have been no significant changes in relation to the alleged subsidy schemes in the Export and Import Policy during the IP. It is clear from the Export and Import Policy covering the period 1 April 2002 to 31 March 2007 that licences/certificates/permissions issued before the commencement of this Policy will continue to be valid for the purpose for which such licence/certificate/permission was issued unless otherwise stipulated.

(27) References to the legal basis for the investigated schemes (i) to (v) referred to in recital 24 are hereafter made in relation to the Export and Import Policy covering the period 1 April 2002 to 31 March 2007 and to the 'Handbook of Procedures — 1 April 2002 to 31 March 2007' (Volume 1).

(28) Income Tax Exemption (vi), specified in recital 24, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

2. **Duty Entitlement Passbook (DEPB) Scheme**

(a) *Legal basis*

(29) The DEPB entered into force on 1 April 1997 by means of Customs Notification 34/97. Paragraphs 4.3.1 to 4.3.4 of the Export and Import Policy and paragraphs 4.37 to 4.53 of the Handbook of Procedures contain a detailed description of the scheme. The DEPB is the successor to the Passbook Scheme which was terminated on 31 March 1997. From the outset there were two types of the DEPB, namely DEPB on a pre-export basis and DEPB on a post-export basis. The GOI stressed that the DEPB on a pre-export basis was abolished on 1 April 2000 and therefore the scheme is not relevant for the IP. It was established that none of the companies enjoyed any benefit under DEPB on a pre-export basis. Therefore, it is not necessary to establish the countervailability of DEPB on a pre-export basis.

(b) *Eligibility*

(30) The DEPB on a post-export basis is available to manufacturer-exporters or merchant-exporters (i.e. traders).

(c) *Practical implementation of DEPB on post-export basis*

(31) Under this scheme, any eligible exporter can apply for credits, which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by

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the Indian authorities for most products, including the product concerned, on the basis of standard input-output norms (SION). A licence stating the amount of credit granted is issued automatically upon receipt of the application.

(32) DEPB on a post-export basis allows for the use of such credits to offset applicable customs duties on any subsequent imports except for goods the importation of which is restricted or prohibited. Imported goods for which such credits are used can be sold on the domestic market (subject to sales tax) or used otherwise.

(33) DEPB licences are freely transferable and, as a consequence, are frequently being sold. The DEPB licence is valid for a period of 12 months from the date of granting of the licence. The company has to pay to the relevant authority a fee equivalent to 0,5 % of the DEPB credit received.

(d) *Conclusions on DEPB on post-export basis*

(34) When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods or can just be sold.

(35) The credit is automatically calculated on the basis of a formula, using SION rates, independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production and in what quantities. Indeed a company can claim a licence on the basis of past exports irrespective of whether it makes any imports or purchases goods from other sources. The DEPB credits are considered to be a financial contribution because they are a grant. They involve a direct transfer of funds, as they can either be sold and converted into cash, or used to offset import duties, thus causing the GOI to forego revenue which is otherwise due.

(36) Texprocil argued that where the exporter has actually imported inputs that are used in the manufacture of the export products and used the DEPB credits for paying the customs duty on such imported inputs, no countervailable benefit can be said to have devolved on the exporter under the DEPB.

(37) In this context, Article 2(1)(a)(ii) of the basic Regulation provides for an exception for, *inter alia*, drawback and substitution drawback schemes which conform to the strict rules laid down in Annex I(i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback).

(38) However, in this case, the exporter is under no obligation actually to consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used.

(39) Furthermore, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of Annex I(i) and Annexes II and III to the basic Regulation.

(40) Lastly, exporters are eligible for the DEPB benefits regardless of whether they import any inputs at all. In order to obtain the benefit, it is sufficient for an exporter simply to export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to the DEPB benefits. Hence, the DEPB on a post-export basis does not fulfil the criteria of Annexes I to III.

(41) In the absence of a requirement that imported inputs be consumed in the production process and a system of verification as required by Annex II to the basic Regulation, the DEPB on a post-export basis cannot be considered as a permitted drawback or substitution drawback scheme (Annex III) pursuant to Article 2(1)(a)(ii) of the basic Regulation.

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(42) Since the above exception to the subsidy definition for drawback and substitution drawback schemes, referred to in recital 37, therefore does not apply, the issue of excess remission does not arise and the countervailable benefit is the remission of total import duties normally due on all imports.

(43) Based on the above, it was concluded that the GOI, by issuing a freely transferable licence, provides the exporters with a financial contribution under the DEPB. This financial contribution by the GOI confers a benefit upon the DEPB holder since the latter obtains free money which as such would not be available in the commercial market. Therefore, the scheme constitutes a subsidy. As the subsidy can only be obtained by exports, it is contingent in law upon export performance within the meaning of Article 3 (4)(a) of the basic Regulation. Therefore, the subsidy is deemed to be specific and thus countervailable.

(e) *Calculation of the subsidy amount for the DEPB post-export basis*

(44) The benefit for the companies was calculated on the basis of the amount of credit granted in the licences, which have been utilised or transferred during the IP.

(45) In cases where the licences were used to import goods without payment of applicable duties, the benefit was calculated on the basis of total import duties foregone. In cases where the licences were transferred (sold), the benefit was calculated on the basis of the amount of credit granted in the licence (face value) regardless of the sales price of the licence, since the sale of a licence is a pure commercial decision which does not alter the amount of benefit (equivalent to the GOI's transfer of funds) received from the scheme.

(46) The amount of subsidy has been allocated over total exports during the IP in accordance with Article 7 of the basic Regulation. In calculating the benefit, the fees necessarily incurred to obtain the subsidy have been deducted.

(47) It was established for one company that the Export and Import Policy specifically excluded certain goods from the eligibility for DEPB, since the export of such goods was subject to special licences. In this case, for the purpose of calculating the *ad valorem* subsidy, it was considered appropriate to allocate the benefit of the DEPB (nominator), over the export turnover of the products eligible for DEPB (denominator).

(48) Texprocil and several companies claimed that costs incurred by paying specialised agents, sales commissions and various other expenses should be deducted when calculating the benefit under this scheme. In this regard, it should be noted that using third parties for selling licences is a purely commercial decision which does not alter the amount of credit granted in the licences. In any event, only costs necessarily incurred in order to obtain a subsidy are deductible in accordance with Article 7(1)(a) of the basic Regulation. Since the above costs are not necessary in order to qualify for the subsidy, the claims were rejected.

(49) Texprocil and several companies claimed that the sale of DEPB licences was subject to sales tax, and therefore the benefit should be reduced accordingly. However, under Indian tax law, the tax subject to sales tax is the purchaser, not the seller. The seller merely collects the sales tax on behalf of the relevant authorities. Consequently, this claim was rejected.

(50) Several companies submitted that the sales of their DEPB licences would generate additional income, and thereby increase their overall tax liability, most notably company income tax. Therefore, it was claimed that the benefit obtained by these companies from DEPB transactions should be reduced by the amount of income tax actually payable. The companies also stated that this claim would not be warranted if no income tax was payable during the same period. Moreover, Texprocil

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claimed that DEPB income is taxable at the uniform rate applicable to the exporters, and that, where the exporter has actually paid income tax on the DEPB benefits granted by the GOI, the benefit received is lessened to the extent of income tax.

When addressing these arguments it is first recalled that a DEPB credit constitutes a grant at a given moment of time. According to the information available, it can indeed not be excluded that these grants, at a later stage, may increase a company's overall tax liability. However, this would be a future event, and will depend on many factors, most of which are influenced by commercial decisions made by the company itself. Such factors do not only relate to pricing and sales issues, but also concern other issues that determine overall tax liability, such as decisions concerning depreciation rates, the carrying forward of losses and many other factors. All these decisions influence the tax bracket that will finally be applied to the company in a specific tax year. It is therefore not possible to determine exactly to what extent benefits obtained from DEPB sales have contributed to the applicable tax rate. In addition, had the company concerned used their DEPB licences for the purpose for which they are in fact intended, namely the import of inputs, it would indeed have lowered its cost and not increased its income, which may again have a different impact on taxation.

It is therefore clear that the granting of DEPB credits and eventual later taxation thereof constitute two independent actions by the GOI. It is not for the investigating authority to attempt to reconstruct the situation which would prevail in the presence or absence of taxation. In any event, this would not effect the calculation of the amount of subsidy established during the IP.

Consequently, these claims were rejected.

(51) Eight companies in the sample benefited from this scheme during the IP and obtained subsidies ranging from 1,45 % to 8,44 %.

3. **Duty-Free Replenishment Certificate (DFRC)**

(a) *Legal basis*

(52) The legal basis for this scheme is contained in paragraphs 4.2.1 to 4.2.7 of the Export and Import Policy and paragraphs 4.31 to 4.36 of the Handbook of Procedures.

(b) *Eligibility*

(53) The DFRC is issued to a merchant-exporter or manufacturer-exporter for the imports of inputs used in the manufacture of goods without payment of applicable duties.

(c) *Practical implementation*

(54) DFRC is a post-export scheme, which allows replenishment, i.e. duty-free import of inputs having the same technical characteristics, quality and specifications as those used in the export product. The quantity of such inputs is determined on the basis of the SION. Such imported goods can be sold on the domestic market or used otherwise.

(55) Under this scheme, any eligible exporter can apply for a certificate. DFRC is issued for import of inputs as per SION as indicated in the shipping bills.

(56) The DFRC only covers the inputs as prescribed in the SION. The technical characteristics, quality and specification of inputs allowed to be replenished have to match those of the inputs used in the export product.

(57) DFRCs are freely transferable. The validity of the DFRC is 18 months.

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(d) *Conclusion on the scheme*

(58) When a company exports goods, it is granted a certificate which can be used to offset amounts of customs duties due on future imports of inputs physically incorporated in the exported goods or can just be sold.

(59) The certificates are considered to be a financial contribution because they are a grant. They involve a direct transfer of funds, as they can either be sold and converted into cash, or used to offset import duties, thus causing the GOI to forego revenue which is otherwise due.

(60) The GOI and Texprocil argued that the DFRC is a legitimate substitution drawback scheme, since the scheme provides for replenishment of inputs used in the exported product. Since the quantity, quality and technical characteristics and specifications match with inputs used in the export product, the scheme is in the view of the GOI and Texprocil permissible under the Agreement on Subsidies and Countervailing Measures (ASCM). Texprocil also argued that, when assessing whether it is a legitimate substitution drawback scheme, the relevant condition is to look at what is being imported and not who is importing. It was further argued that in so far as the Government is concerned, no additional benefit is granted.

(61) Article 2(1)(a)(ii) of the basic Regulation provides for an exception for, *inter alia*, drawback and substitution drawback schemes which conform to the strict rules laid down in Annex I (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback).

(62) It should be stressed that drawback systems imply the refund of duties paid on imported inputs, which have been consumed in the production process of an exported product. However, in case of DFRC, there need have been no import of inputs for which duties have been paid or exempted for in the first place.

(63) Drawback systems can allow for the *ex post* refund or drawback of import charges on inputs which are consumed in the production process of another product, including situations where the export of the latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs (‘substitution drawback’ schemes). It would for instance be allowed for a company, in case of a shortage of imported inputs, to use domestic inputs and incorporate these in the exported goods, and then at a later stage import the corresponding quantity of inputs free of any duty. In this context, the existence of a verification system or procedure is important because it enables the government of the exporting country to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is no drawback of import charges in excess of those originally levied on the imported inputs in question.

(64) Under DFRC, which is a post-export scheme as mentioned in recital 54, there is a built-in obligation to import only inputs that were consumed in the production of the exported goods. These inputs have to be of the same quantity and characteristics as the domestic inputs used in the exported goods. On this basis, the DFRC presents some of the characteristics of a substitution drawback scheme according to Annex III to the basic Regulation. The investigation established, however, that there was no system or procedure in place to confirm whether and which inputs are consumed in the production process of the exported product or whether an excess benefit of import duties occurred within the meaning of Annex I(i), and Annexes II and III to the basic Regulation.

(65) Furthermore, the DFRC is, as mentioned above in recital 57, freely transferable. This implies that the exporter, which is granted a certificate to offset amounts of customs duties due on

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future imports of inputs, is under no obligation actually to consume the imported inputs in the production process or even actually to use the certificate to import inputs (i.e. there is no actual user condition). Instead, the exporter may decide to sell the certificate to importers. Consequently, the DFRC cannot be considered as a substitution drawback scheme in accordance with the basic Regulation ([1]).

(66) Based on the above, the GOI, by issuing a certificate which is freely transferable, provides exporters with a financial contribution. In these circumstances, the certificates actually represent a direct grant from the GOI to the exporters concerned.

(67) In conclusion, this financial contribution by the GOI confers a benefit upon the DFRC holder, since the latter obtains free money, which as such would not be available in the commercial market. Therefore, the scheme constitutes a subsidy. As the subsidy can only be obtained by exports, it is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation. Therefore, the subsidy is deemed to be specific and thus countervailable.

(e) *Calculation of the subsidy amount*

(68) One exporter used the DFRC as a substitution drawback scheme. This company was able to demonstrate that the quantities of imported inputs, which were exempted from import duties, did not exceed the quantities used for the exported goods. Moreover, the company was able to demonstrate that there was no drawback of import charges in excess of those originally levied on the imported inputs in question. It was therefore concluded that, in the case of this company, the exemption of import duties on inputs were in accordance with the provisions of Annexes I to III to the basic Regulation, and therefore no benefit was conferred in the IP.

(69) Two companies sold the certificates they had obtained. Since the DFRC only covers the inputs given in the SION, it would have been appropriate to establish the benefit using the same methodology as under the DEPB, i.e. calculating the benefit as a percentage of the value of the exported finished products. As explained above, such standard rates have been established by the Indian authorities for most products, including the product concerned.

(70) However, the certificate under this scheme does not have a face value, in the same way as the credits under the DEPB scheme. The certificate shows the quantity of inputs permitted for import as well as a maximum total value up to which such inputs can be imported. In this case, given the absence of a specific monetary value on each certificate, it was not possible to establish a benefit of the scheme on the basis of the value or the quantity of the exported goods. In cases where the certificates were transferred (sold), it was therefore considered reasonable to calculate the benefit on the basis of the sales price of the certificate.

(71) The amount of subsidy has been allocated over total exports during the IP in accordance with Article 7 of the basic Regulation.

(72) Two companies benefited from this scheme during the IP. For one company the subsidy obtained was 3,08 %, whereas for the other the subsidy established was negligible.

([1]) The fact that the DFRC may not be considered as a substitution drawback scheme according to the basic Regulation (i.e. the Indian legislation does not ensure that it will operate as a proper drawback scheme) does not preclude the possibility that individual exporters may use DFRC as a drawback scheme.

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4. **Export Promotion Capital Goods (EPCG) scheme**

(a) *Legal basis*

(73) The EPCG scheme was announced on 1 April 1992. During the IP the scheme was regulated by Customs Notifications Nos 28/97 and 29/97 which entered into force on 1 April 1997. Details of the schemes are contained in Chapter 5 of the 2002 to 2007 Export and Import Policy and Chapter 5 of the Handbook of Procedures.

(b) *Eligibility*

(74) The scheme is available to 'manufacturer exporters with or without supporting manufacturer(s)/vendor(s), merchant exporters tied to supporting manufacturer(s) and service providers' (quoted from Chapter 5.2 of the 2002 to 2007 Export and Import Policy).

(c) *Practical implementation*

(75) To benefit from the scheme, a company must provide to the relevant authorities details of the type and value of capital goods which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero or reduced rate of duty. In order to meet the export obligation, the imported capital goods must be used to produce exported goods. Upon application by the exporter, a licence authorising the import at preferential rates is issued. An application fee is payable to obtain the licence.

(76) The EPCG licence holder can also source the capital goods himself indigenously. In such a case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty-free import of components required for manufacture of such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCG licence holder.

(77) There is an export obligation in order to be eligible for the EPCG scheme. The export obligation must be fulfilled by the export of goods manufactured or produced by using the capital goods imported under the scheme. The export obligation involves a requirement to export more than the average level of exports of the same product achieved by the company in the preceding three licensing years.

(78) Recently, there has been a change in the conditions of the scheme in respect of the calculation of the export obligation. However, this is only applicable for licences issued after 1 April 2003, i.e. not covered by the IP. Under the new rules, the companies will have eight years to fulfil the export obligation (the value of exports must be at least six times the value of the total duty exemption for imported capital goods).

(d) *Conclusion on EPCG scheme*

(79) The payment by an exporter of a reduced or zero rate of import duty constitutes a financial contribution by the GOI, since revenue otherwise due is foregone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties. Hence, the EPCG scheme is a subsidy.

(80) The licence cannot be obtained without a commitment to export goods. As the subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, it is deemed to be specific and thus countervailable.

(81) It was argued that the scope of the term 'input' in Annex I(i) to the basic Regulation also covers capital goods, since capital goods are essential inputs for production, without the use of

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which no final product could ever come into existence. It was further argued that it is only with the use of capital goods that the raw materials are converted into finished goods, and that the depreciation charged on the capital goods represents the value of capital goods used in the production of final products. Therefore, duty exemption on capital goods used in the production of the exported product should be treated as duty exemption on inputs used in the production of the exported products and such exemption should not be treated as countervailable benefit within the meaning of the basic Regulation.

In reply to these arguments, it is considered that capital goods do not constitute 'inputs' within the meaning of the basic Regulation because they are not physically incorporated into the exported products. Consequently, the above arguments are rejected.

(e) *Calculation of the subsidy amount*

(82) The benefit to the companies has been calculated on the basis of the amount of unpaid customs duty on imported capital goods by spreading this amount across a period which reflects the normal depreciation period of such capital goods in the industry of the product concerned pursuant to Article 7 of the basic Regulation. In accordance with the established practice, the amount so calculated which is attributable to the IP has been adjusted by adding interest during the IP in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipient. Given the nature of the subsidy, which is equivalent to a one-time grant, the commercial interest rate during the IP in India (estimated at 10 %) was considered appropriate. The amount of subsidy was then allocated over total exports during the IP, in accordance with Article 7 of the basic Regulation.

(83) In respect of the calculation of the subsidy amount, it was argued that a subsidy calculation, based on the 'benefit to the producer' perspective, requires the allocation of the subsidy amount (unpaid customs duties) attributable to the IP over the whole production (domestic plus exports) of the product concerned. It was further argued that companies which also have domestic sales of bedlinen used the same capital goods for their entire production of bedlinen.

In reply to this, it is recalled that this scheme is contingent solely upon export performance. In accordance with Article 7(2) of the basic Regulation, the benefit for this scheme should therefore be allocated over export turnover only since the subsidy is granted by reference to a certain value of exports of goods within a certain time period. Therefore, the claim that benefits under the scheme should be allocated over total turnover is rejected.

(84) Three companies benefited from this scheme during the IP. Two companies obtained subsidies of 0,38 % and 2,0 % respectively, whereas for the third company the subsidy established was negligible.

5. **Advance Licence Scheme (ALS)**

(a) *Legal basis*

(85) The ALS has been in operation since 1977 to 1978. The scheme is specified in paragraphs 4.1.1 to 4.1.7 of the Export and Import Policy and parts of Chapter 4 of the Handbook of Procedures.

(b) *Eligibility*

(86) Advance licences are available to exporters to enable them to import inputs used in the production of exports, duty-free.

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(c) *Practical implementation*

(87) The volume of imports allowed under this scheme is determined as a percentage of the volume of exported finished products. The advance licences measure the units of authorised imports in terms of their quantity as well as in terms of their value. In both cases, the rates used to determine the allowed duty-free purchases are established for most products, including the product concerned, on the basis of SION. The input items specified in the advance licences are items used in the production of the relevant finished products.

(88) Advance licences can be issued for:

(i) 'physical exports: Advance Licences may be issued for physical exports to a manufacturer exporter or merchant exporter tied to supporting manufacturer(s) for import of inputs required for the export product' (quoted from Chapter 4.1.1(a) of the 2002 to 2007 Export and Import Policy).

(ii) intermediate supplies: advance licences may be issued for intermediate supply to a manufacturer-exporter for the inputs required in the manufacture of goods to be supplied to the ultimate exporter/deemed exporter holding another advance licence. The advance licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against advance licences for intermediate supplies. In such cases the quantities purchased on the domestic market are written off from the advance licences, and an intermediate advance licence is issued to the benefit of the domestic supplier. The holder of such intermediate advance licence is entitled to the benefit of importing duty-free the goods needed to produce those inputs delivered to the final exporter.

(iii) deemed exports: advance licences can be issued for deemed export to the main contractor for import of inputs required in the manufacture of goods to be supplied to the categories mentioned in paragraph 8.2. of the Policy. According to the GOI, deemed exports refers to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to Export Oriented Units, supply of capital goods to holders of licences under the EPCG.

(iv) advance release orders (AROs): the advance licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the advance licences are validated as AROs and are endorsed to the supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the supplier to the benefits of deemed exports drawback and refund of terminal excise duty. In a way, the ARO mechanism refunds taxes and duties to the manufacturer supplying the product, instead of refunding the same to the exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs.

(89) It was established during the verification that only the ALS referred to under (i) above (physical exports) was used by one manufacturing-exporter during the IP. It is therefore not necessary to establish the countervailability of the categories (ii), (iii) and (iv) of the ALS in the context of this investigation.

(d) *Conclusions on the scheme*

(90) Only exporting companies are granted licences, which can be used to offset amounts of customs duties on imports. In this regard, the scheme is contingent upon export performance.

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(91) As mentioned above, it was established that the ALS, in respect of 'physical exports', was used by one investigated company during the IP. The company used the ALS for duty-free imports of inputs for exported goods.

(92) The GOI claimed that the ALS is a quantity-based scheme, and that the inputs allowed under this licence are with reference to the quantity of exports. It was also submitted that whatever inputs are imported under the ALS, the same inputs have to be used in the manufacturing of the exported products or for replenishment of the stock of inputs used in the products already exported. According to the GOI, the imported inputs have to be used by the exporter and no such inputs are allowed to be sold or transferred.

(93) Although the ALS appears to be subject to actual user condition, it was noted that there was no system or procedure in place to confirm whether and which inputs are consumed in the production process of exported goods. The system only shows that the goods imported duty-free have been used in the production process, with no distinction between the destination of the goods (domestic or export market).

(94) However, for the purposes of this investigation, the company in question was able to demonstrate that the quantities of imported materials, which were exempted from import duties, did not exceed the quantities used for the exported goods. It was therefore concluded that, in the case in question, the exemption of import duties on inputs required for the export product were granted in accordance with the requirements of Annexes I to III of the basic Regulation.

(95) Therefore, it is found that there is no benefit granted to the company under this scheme.

6. **Export Processing Zones (EPZs)/Export Oriented Units (EOUs)**

(a) *Legal basis*

(96) The EPZ/EOU scheme, which was introduced in 1965, is an instrument under the Export and Import Policy involving export-related incentives. During the IP the scheme was regulated by Customs Notifications Nos 53/97, 133/94 and 126/94. Details of the schemes are contained in Chapter 6 of the 2002 to 2007 Export and Import Policy and Chapter 6 of the Handbook of Procedures.

(b) *Eligibility*

(97) In principle, companies undertaking to export their entire production of goods and services may be set up under EPZ/EOU scheme. Once the EPZ/EOU status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of customs officials in accordance with Section 65 of the customs Act. Although companies operating within EOU/EPZ scheme are to export their entire production, the GOI does allow these units to sell a part of their production on the domestic market under certain conditions.

(c) *Practical implementation*

(98) Companies requesting EOU status or located in an EPZ must apply to the competent authorities. Such application must include details for a period of the next five years, on, *inter alia*, planned production quantities, projected value of exports, import requirements and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZs and EOUs can be involved in the

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production of any product. The agreement to be recognised as a company under the EPZ/EOU scheme is valid for a five-year period. The agreement may be renewed for further periods.

(99) EPZ/EOU businesses are entitled to the following benefits:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for manufacture, production or processing, or in connection therewith;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) exemption from income tax normally due on profits realised on export sales in accordance with Section 10A or 10B of the Income Tax Act, for a 10-year period up to 2010;

(iv) reimbursement of central sales tax paid on goods procured locally;

(v) possibility of 100 % foreign equity ownership;

(vi) facility to sell a part of production in the domestic market on payment of applicable duties, as an exception to the general requirement to export the entire production.

(100) EOUs or companies located in an EPZ should maintain, in the specified format, a proper account of all imports concerned and of the consumption and utilisation of all imported materials and of the exports made. These should be submitted periodically, as may be required, to the competent authorities.

(101) The importer must also ensure minimum net foreign exchange earnings as a percentage of exports and export performance as stipulated in the Export and Import Policy. The entire operations of an EOU/EPZ are to be done in customs-bonded premises.

(d) *Conclusions on EPZ/EOU*

(102) In the present investigation, the EPZ/EOU scheme was used by one company for the import of raw materials, capital goods and for the procurement of goods on the domestic market. In addition, the company used the facility to sell a part of its production in the domestic market. It was found that concessions related to the exemption from customs duties on raw materials and capital goods, as well as the exemption from excise duty on goods procured from indigenous sources and the reimbursement of central sales tax paid on goods procured locally, were used by the company. Therefore, the Commission examined the countervailability of these concessions. In this regard, the EPZ/EOU scheme involves the granting of subsidies as the concessions constitute financial contributions by the GOI, since revenues otherwise due are foregone and a benefit is therefore conferred on the recipient. As the granting of this subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, it is therefore deemed to be specific and thus countervailable.

(103) As far as raw materials and consumables are concerned, they can qualify for the exemption of Annex I(i) to the basic Regulation only if they are consumed in the production process of the exported product and if there is a verification system in place in order to confirm which inputs are consumed in the production of the exported goods and in what amount. It should be noted that imports of machinery (capital goods) do not fall under this exemption.

(104) Texprocil argued that, for the reasons stated under the EPCG scheme in recital 81, the capital goods imported under the EOU scheme should not be countervailable.

(105) In reply to this, it should be recalled that, for the reasons set out above in relation to the EPCG in recital 81, capital goods do not

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constitute ‘inputs’ within the meaning of the basic Regulation. Moreover, it has been determined that this scheme is contingent in law solely upon export performance. It is therefore deemed to be specific and thus countervailable.

(106) In the case of excise-duty exemption, it was found that the duty paid on purchases by a non-EOU unit is credited as a drawback (CENVAT) and is utilised towards payment of excise duty on domestic sales. Thus, by exempting excise duty on purchases by an EOU unit, no additional government revenue is foregone and consequently no additional benefit accrues to the EOU.

(107) This is not the case in respect of reimbursement of central sales tax paid on goods procured locally, since this tax is not refundable for companies operating on the domestic market. Paragraph 6.12 of the Export and Import Policy stipulates that EPZs/EOUs are entitled to this reimbursement provided the goods supplied are manufactured in India. In other words, EOUs are, unlike domestic companies, entitled to reimbursement of central sales tax.

(108) Texprocil also argued that central sales tax payable on inputs procured indigenously and used in the production of the export product is an indirect tax within the meaning of Annex I(h) to the basic Regulation, and that, accordingly, exemption of such prior stage cumulative indirect taxes cannot be held to be countervailable.

(109) The illustrative list of export subsidies in Annex I to the basic Regulation stipulates under item (h): ‘The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II’.

(110) It was argued that Annex I(h) to the basic Regulation provides for the following:

‘(i) Prior-stage cumulative indirect taxes on inputs used in the production of export product shall be exempt.

(ii) The only condition is that the prior-stage cumulative indirect taxes should have been levied on those inputs.

(iii) The exemption shall be granted even when such an exemption is not given on like products when sold for domestic consumption.’

(111) In this respect, it should be noted that, for the purpose of the basic Regulation, ‘cumulative’ indirect taxes are multi-staged taxes levied, where there is no mechanism for subsequent crediting of the tax, if the goods or services subject to tax at one stage of production are used in a succeeding state of production.

(112) In addressing the arguments, it should be recalled that, in accordance with Export and Import Policy, EOUs are entitled to reimbursement of central sales tax paid on goods procured locally. In other words, it is not a requirement that goods have to be incorporated in the production of exported goods. According to the GOI, the tax subject in case of sales tax is the purchaser, and central sales tax is in general not refundable.

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(113) The reimbursement to EOUs of central sales tax paid on goods procured locally is considered a countervailable subsidy for the following reasons. Pursuant to the provisions of Annex I(h) to the basic Regulation, the reimbursement to EOUs (which are required to export) of central sales tax paid on goods procured locally is an excess remission when compared to goods sold for domestic consumption (for which there is no reimbursement of central sales tax). As mentioned above, paragraph 6.12 of the Export and Import Policy stipulates that EPZs/EOUs are entitled to this reimbursement, provided that the goods supplied are manufactured in India. EOUs are, unlike companies selling on the domestic market, entitled to reimbursement of central sales tax. Moreover, it has not been demonstrated that the reimbursement is provided in accordance with the guidelines on consumption of inputs in the production process (Annex II to the basic Regulation). No evidence has been provided that the GOI has in place and applies a system or procedure to confirm whether inputs are consumed in the production of the exported product and in what amounts. In addition, the investigation established that the company concerned procured under central sales tax exemption a number of items which are not consumed in the production of the exported goods. On this basis, it can only be concluded that an excess payment has occurred.

(114) In addition, it was argued that the relevant EOU in this particular case is located in the Indian State of Uttar Pradesh, and that, therefore, the sales tax law applicable for this State should be considered for determining whether non-EOUs located in the particular State are exempt from paying sales tax or not. It was further argued that the Indian legislation, the State Trade Tax Act, provides for granting exemption or concession from payment of tax on the purchase of raw material and packing material used in the manufacture of the exported goods. It was argued that the provision does not distinguish whether the product is exported by an EOU or a non-EOU.

(115) However, it was established at the verification visit to the GOI that central sales tax, and not local sales tax, is applicable in case of inter-State sales. It was explained that central sales tax is, in general, not refundable (apart from the fact that EOUs are entitled to reimbursement of central sales tax paid on goods procured locally). However, with regard to the local sales tax, which is applicable in case of sales within a State in India, the local government decides on the granting of exemptions. The fact that a particular State may grant certain different exemptions or concession from payment of tax is not relevant when assessing the countervailability of the scheme in respect of reimbursement of central sales tax paid on goods procured locally. This argument is therefore rejected.

(116) In conclusion, as the subsidy is tied to an EPZ/EOU, it is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation. Therefore, the subsidy is deemed to be specific and thus countervailable.

(e) *Calculation of the subsidy amount*

Exemption from import duties on raw materials

(117) During the verification visit, the nature and quantities of imported materials were verified. The investigation established that the company sourced raw materials domestically, and imported only small quantities. The question of whether an excess remission of import duty has occurred did therefore not arise.

Exemption from import duties on capital goods

(118) Unlike raw materials, capital goods are not physically incorporated into the finished goods. For calculation purposes, the amount of duty foregone is equivalent to a grant on each import of capital good. Consequently, the benefit to the investigated

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company has been calculated on the basis of the amount of unpaid customs duty on imported capital goods by spreading this amount across a period which reflects the normal depreciation period of such capital goods in the industry of the product concerned in accordance with Article 7 of the basic Regulation. The amount so calculated which is then attributable to the IP has been adjusted by adding interest during the IP in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipient. Given the nature of the subsidy, which is equivalent to a one-time grant, the commercial interest rate during the IP in India (estimated at 10 %) was considered appropriate. The total amount of subsidy has then been allocated over total export turnover of the EOU in accordance with Article 7 of the basic Regulation. Based on this calculation, the company obtained a subsidy of 6,85 %.

Reimbursement of central sales tax paid on goods procured locally

(119) The benefit was calculated on the basis of the amount of central sales tax refundable for purchases during the IP. The amount of subsidy has been allocated over total exports during the IP in accordance with Article 7 of the basic Regulation. Based on this, it is found that the company obtained a subsidy of 1,75 %.

7. **Income Tax Exemption (ITES)**

(a) *Legal basis*

(120) The Income Tax Act 1961 is the legal basis under which Income Tax Exemption operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by Sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales.

(b) *Eligibility*

(121) Exemption under Section 10A can be claimed by firms located in free trade zones. Exemption under Section 10B can be claimed by EOUs. Exemption under Section 80HHC can be claimed by any firm which exports goods.

(c) *Practical implementation*

(122) To benefit from the abovementioned tax deductions/exemptions, a company must make the deduction/exemption claim when submitting its tax return to the tax authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to three years after submitting the tax return. A company may only claim one of the deductions available under the three sections mentioned above.

(d) *Conclusion on Income Tax Exemption*

(123) Annex I(e) to the basic Regulation refers to the ‘full or partial exemption … related to exports, of direct taxes’ as constituting an export subsidy. Under the Income Tax Exemption, the GOI confers a financial contribution to the company by foregoing government revenue in the form of direct taxes which would be due if the income tax exemptions were not claimed by the company. This financial contribution confers a benefit to the recipient by reducing its income tax liability.

(124) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific.

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(125) The GOI and Texprocil argued that Income Tax Exemption in respect of Section 80HHC is gradually being phased out starting from the financial year April 2001 to March 2002. It was argued that it was therefore not appropriate to countervail this scheme.

(126) It was also argued that in terms of Subsection 1B of Section 80HHC of the Income Tax Act, a specified percentage of export profits are exempt during the relevant years as given in the table below:

| Financial year | Assessment year | Percentage of export profit allowed as a deduction |
|---|---|---|
| 2000-2001 | 2001-2002 | 80 % |
| 2001-2002 | 2002-2003 | 70 % |
| 2002-2003 | 2003-2004 | 50 % |
| 2003-2004 | 2004-2005 | 30 % |
| 2004-2005 | 2005-2006 | 0 % |

(127) In respect of the arguments made, it was established during the verification that the programme was still in force at the end of the IP. Indeed, the actual rate of export income being exempted from income tax was 70 % and the scheme will still continue to confer benefits to exporting producers in India at the time of the imposition of definitive measures. In accordance with Article 15 of the basic Regulation, countervailing duties should be imposed unless the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved. Since the Income Tax Exemption under Section 80HHC clearly meets the criteria for the imposition of duties under Article 15 of the basic Regulation, any benefits from it should be included in the total amount of countervailing duty.

(e) *Calculation of the subsidy amount*

(128) Claims for benefit under Sections 10A, 10B and 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India runs from 1 April to 31 March, the benefit was calculated on the effective income tax exemption claimed during the tax year ending during the IP (i.e. 1 April 2001 to 31 March 2002). This tax claim had to be filed on 30 September 2002 at the latest, i.e. at the time of the end of the IP. The benefit to the exporters has therefore been calculated on the basis of the difference between the amount of taxes normally due with and without the exemption. The rate of corporate tax applicable during this tax year was 35,7 %. The amount of subsidy has been allocated over total exports, in accordance with Article 7(2) of the basic Regulation.

(129) Although it was submitted that the subsidy benefit should be treated as nil, alternative methods were suggested for the purpose of the calculation of the subsidy margin, notably in relation to the applicable tax rates.

(130) In this regard, it is noted that Article 5 of the basic Regulation provides that the amount of countervailable subsidies should be calculated in terms of the benefit conferred on the recipient which is found to exist during the IP for subsidisation. As mentioned above, the benefit was calculated on the basis of the amount of taxable profit normally earned in the tax year 2001 to 2002 (i.e. 1 April 2001 to 31 March 2002) which ended halfway through the IP. During the tax year 2001 to 2002 (which is the assessment year 2002 to 2003), the actual rate of export income (i.e. the percentage of export income eligible for the tax exemption) being exempted from income tax was 70 %. For the

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subsequent tax year (i.e. from 1 April 2002 to 31 March 2003), the actual rate of export income being exempted from income tax is 50 %. It is considered that, as part of this latter tax year falls within the IP of this proceeding, it is appropriate to make the calculation of the amount of countervailable subsidies on the basis of a pro rata average of the two rates which applied in the IP, i.e. 60 %. Appropriate adjustments have accordingly been made to the amount of subsidy for the companies which availed of this scheme.

(131) It was also claimed that the DEPB income should be deducted from the amount of taxable income. It was argued that, in the absence of DEPB income, there would have been no taxable profit derived from export sales. This argument is without merit. Even if its inclusion was appropriate, the DEPB benefit is given to eligible firms in the form of a cash grant (i.e. a direct transfer of funds), while the income tax exemption applies to government revenue 'otherwise due' being foregone. Although the DEPB benefits clearly form part of a firm's total revenue, the two subsidies result from two independent actions by the GOI. It is not for the investigating authority to attempt to reconstruct the situation which would prevail in the absence of certain subsidies. In any event, a firm's taxable profit, on exports or on all transactions, is derived from a comparison of its total revenue and costs, which are made up of many different elements, and which result from all sorts of commercial decisions and market forces. It would be unreasonable to select one element (e.g. the DEPB income) and then set this aside from the calculation. In any event, as explained above, the benefit was calculated for all companies on the effective income tax exemption claimed during the tax year ending during the IP (i.e. 1 April 2001 to 31 March 2002).

(132) Six companies benefited from this scheme during the IP. Five companies obtained subsidies ranging from 0,32 % to 3,70 %, whereas for the sixth company the subsidy established was negligible.

8. **Amount of countervailable subsidies**

(133) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers ranged ranging between 3,09 % and 10,44 %.

(134) In accordance with Article 15(3) of the basic Regulation, the subsidy margin for the cooperating companies not included in the sample, calculated on the basis of the weighted average subsidy margin established for the cooperating companies in the sample, is 7,67 %. Given that the level of the overall cooperation for India was high (above 90 %), the residual subsidy margin for all other companies was set at the level for the company with the highest individual margin, i.e. 10,44 %.

| Type of subsidy | DEPB | DFRC | EPCGS | EPZ/EOU | ITES | TOTAL |
|---|---|---|---|---|---|---|
| | Post-export | | | | | |
| Bombay Dyeing<br>N. W. Exports Limited<br>Nowrosjee Wadia & Sons Limited | 4,95 % | | 0,38 % | | | 5,33 % |
| Brijmohan Purusottamdas | 5,93 % | | | | 0,32 % | 6,25 % |
| Divya | 3,47 % | | | | 2,95 % | 6,42 % |
| Jindal Worldwide | 1,45 % | | | | 1,65 % | 3,09 % |
| Texcellence | 1,88 % | 3,08 % | | | 3,70 % | 8,65 % |

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| Type of subsidy | DEPB | DFRC | EPCGS | EPZ/EOU | ITES | TOTAL |
|---|---|---|---|---|---|---|
| | Post-export | | | | | |
| Mahalaxmi Exports | 7,02 % | | | | 2,29 % | 9,31 % |
| Pasupati | | | | 8,59 % | | 8,59 % |
| Prakash Cotton Mills | 8,44 % | | 2,00 % | | | 10,44 % |
| Vigneshwara | 4,46 % | | | | | 4,46 % |
| Cooperating companies not in the sample | | | | | | 7,67 % |
| All others | | | | | | 10,44 % |

(135) In respect of a sampled company, i.e. Bombay Dyeing and Manufacturing Co. Ltd, it was established that this company used licences obtained by two related companies: Nowrosjee Wadia & Sons Limited & N. W. Exports Limited. The investigation revealed that the two related companies exported products produced by Bombay Dyeing and Manufacturing Co. Ltd. The related companies should therefore be subject to the subsidy margin established for Bombay Dyeing and Manufacturing Co. Ltd.

## D. **COMMUNITY INDUSTRY**

(136) 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. One producing company opposed to the proceeding represented less than 1 % of the Community production.

(137) The Commission has assessed whether all the above companies could be considered as Community producers within the meaning of Article 9(1) of the basic Regulation. The output of all the above companies constitutes the Community production.

(138) 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 bedlinen. They are therefore deemed to constitute the Community industry within the meaning of Articles 9(1) and 10 (8) of the basic Regulation.

## E. **INJURY**

### 1. **Preliminary remarks**

(139) 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, utilisation of capacity, return on investment and wages.

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2. **Community consumption**

(140) 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 India 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*

(141) Imports of cotton-type bedlinen from India into the Community decreased in volume from 15 700 tonnes in 1999 to 14 300 tonnes in the IP, i.e. by 9 % over the period considered. After a slight increase between 1999 and 2000, imports went down in 2001. The corresponding market share decreased from 9,1 % in 1999 to 7,2 % in the IP.

(142) While it is true that imports from India lost market share throughout the period considered, the level of these imports is substantially above the levels set out in Article 10(11) of the basic Regulation. The significance of these imports is also illustrated by comparing them to the market share of the Community industry. The market share held by the imports originating in India amounts to more than one third of the Community industry's market share. It is also worth noting additionally that in the first nine months of 2003 import volumes have increased by more than 11 % on a year-on-year basis.

(b) *Prices*

(143) Average prices from India remained stable during 1999 and 2000 at around EUR 5,65/kg. In 2001 they rose to around EUR 5,80/kg and dropped subsequently in the IP to around EUR 5,50/kg, i.e. by 5 %.

(c) *Price undercutting*

(144) 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 determined on a cif basis with an appropriate adjustment for the customs duties and post-importation costs.

(145) This comparison showed that during the IP the products concerned originating in India were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, by between 26 and 77 %. In more than 75 % of the cases, undercutting margins amounted to between 60 and 70 %.

4. **Situation of the Community industry**

(146) It was analysed whether the Community industry was 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.

(147) 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. It should be noted that these quotas have not been fully used during the IP. The quantities which can be imported under the quotas correspond to

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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 India to a market share of around 12 %. 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 provided for 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 from suffering 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. In fact, the situation of the Community industry deteriorated even though the Indian exporters did not fully exploit their allocated quota during the IP. The submission is therefore rejected.

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

Production, employment and productivity

(148) 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 %.

(149) 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

(150) 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 million in 1999 to EUR 441 million in 2001 but subsequently decreased by 5 percentage points to EUR 420 million during the IP.

(151) Despite the fact that consumption in the Community market increased by 15 % during the same period, the Community industry's market share actually 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

(152) 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

(153) 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 was considered that in this case stocks were not a relevant indicator of injury due to the industry specific high fluctuations of stocks.

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(154) 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 capacity relating to the like product. In addition, part of the production process is subcontracted in some of the sampled Community producers.

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

(156) It was submitted that the evolution of production capacity and capacity utilisation cannot be regarded as supporting a finding of injury. In this respect, and as in previous investigations concerning the same product, it is recognised that it was not possible to draw an overall conclusion concerning the capacity of individual machines. Nevertheless, the analysis of the printing capacity was one of the indications, albeit limited to a part of the like product only, which suggested that there was injury.

Prices

(157) Average prices per kg of the sampled 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.

(158) It was submitted that the development of prices cannot be regarded as supporting a finding of injury. This allegation was only based on the fact that sales prices of the sampled companies slightly increased, for which an explanation was, however, provided in recital 157. Furthermore, the price development is only one factor to be analysed. In addition, total unit costs also increased and as the Community industry increasingly moved to the production of high added-value niche products, this commanded a higher price. An increasing average price does therefore not necessarily support a finding of no injury. The submission is therefore rejected.

Investments and ability to raise capital

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

(160) There was no claim from the Community industry nor indication that the Community industry encountered problems in raising capital for its activity.

Profitability, return on investment and cash flow

(161) 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 %.

(162) It was submitted that an average profitability of over 5 % in the period considered cannot be considered to support a finding of

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injury. In this respect, injury has to be established mainly in relation to the IP. During the IP, the profitability was only at 4,4 %. Moreover, profitability had reached 7,7 % in 1999, a year in which the Community industry did not suffer the competition of subsidised imports, and then decreased by 43 % over the period considered, i.e. there was an important decrease over the period considered, due to fierce competition from subsidised imports. As a result, the profitability in the IP fell short of the profitability that could have been reached in the absence of subsidised imports, i.e. 6,5 %.

(163) It was submitted that the decrease in profitability of the sampled companies cannot be attributed to subsidised imports, but to an increase in labour costs and decreased investments. Average labour costs of the sample increased only by 4,2 % in the period considered, hence, this does not explain the profitability decrease. Furthermore, a decrease in investments does not necessarily entail a decrease in profitability. The submission is therefore rejected.

(164) It was submitted that the decrease in the return on investment is a mere reflection of the decrease in investment. However, the return on investment is defined as profits in relation to the value of total assets. Therefore, the decrease in investments would contribute to a decrease in the value of total assets and therefore to an increase in the return on investment. The submission is therefore dismissed.

(165) The cash flow generated by the like product diminished considerably from EUR 16,8 million in 1999 to EUR 11,3 million 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 %.

(166) It was submitted that the Commission considered cash flow as a non-significant indicator. In this respect, it is to be noted that cash flow is indeed influenced by stock variations and therefore 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 indicators, confirming the negative evolution of the Community industry, and should not be qualified as insignificant.

Wages

(167) Labour costs increased by 3,3 % over the period considered, from EUR 35,2 million in 1999 to EUR 36,3 million during the IP. As the number of employees remained basically stable, average labour costs also increased, from EUR 29 100 to EUR 30 300. These increases are nominal increases and are considerably below the increase in consumer prices of more than 7,8 % over the period considered.

(168) It was submitted that wage increases do not point to injury. It is noted, in this respect, that average labour costs of the sampled companies have increased in nominal terms by only 4,2 % throughout the period considered, which, taking the increase in consumer prices into account, means that they decreased in real terms by around 3,6 %.

Magnitude of the amount of countervailable subsidies

(169) Given the volume and the price of the subsidised imports, the impact of the actual margin of subsidy, which is also significant, cannot be considered negligible.

Relevance of indicators

(170) It was submitted that output, productivity and sales volume were increasing and employment was stable, which does not confirm injury. It was also submitted that the analysis of stocks and the ability to raise capital did not confirm injury and that it was therefore meaningless to comment this factor. In this respect it

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should be noted that injury has to be established on the basis of an examination of numerous factors and that, according to Article 8(5) of the basic Regulation, any one or more of these can necessarily give decisive guidance. The argument is not convincing, as no single indicator is relevant on its own and other indicators show a negative trend. The argument is therefore rejected.

### 5. **Conclusion on injury**

(171) 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 during the period considered by 9,1 %. Several other injury indicators such as capacity utilisation, cash flow, return on investment and investments also developed negatively. For the sampled Community producers investments were significantly reduced and also the return on investment 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 share declined by 9,1 %. Moreover, the average sales prices of the Community industry decreased over the period considered.

(172) In the light of the foregoing it is concluded that the Community industry has suffered material injury within the meaning of Article 8 of the basic Regulation.

## F. **CAUSATION**

### 1. **Introduction**

(173) In accordance with Article 8(6) of the basic Regulation, the Commission examined whether the subsidised imports originating in India have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the subsidised 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 subsidised imports.

### 2. **Effect of the subsidised imports**

(174) Imports of cotton-type bedlinen from India into the Community decreased overall in volume from 15 700 tonnes in 1999 to 14 300 tonnes, i.e. by 9 %, in the IP. After a slight increase between 1999 and 2000, imports went down in 2001 and remained stable in the IP. The corresponding market share decreased from 9,1 % in 1999 to 7,2 % in the IP, which is still substantial.

(175) Average prices from India dropped slightly over the period considered. First, they remained stable during 1999 and 2000 at around EUR 5,65/kg. In 2001 they rose to around EUR 5,80/kg but then dropped subsequently in the IP to around EUR 5,50/kg, i.e. by 5 %.

(176) In the analysis of the effect of the subsidised 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 India, specify all the characteristics of the product

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(design, colour, quality, sizes, etc.) 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 subsidised imports were considerably below those of the Community industry as well as below those of other third-country exporters, and even continued to decrease during the IP. Moreover, it was also found that the Community industry had to withdraw largely from the low-priced market segments, where imports from India are strong, this also underlining the causal link between the subsidised Indian imports and injury suffered by the Community industry.

(177) It was submitted that imports originating in India decreased in absolute and relative terms in a situation without duties, and that they represented a relatively small market share and did therefore not cause injury.

(178) Imports originating in India indeed decreased. Nevertheless, several factors play a role for causation: first, during the IP these imports were subject to a customs duty of 10,2 % (until December 2001) and 9,6 % (from January 2002), while imports originating in Pakistan, the largest supplier, were exempt from that duty from January 2002. Second, as to the size of the market share, the decisive question is not whether a market share is relatively small or not, but whether it is large enough to be able to cause material injury. In this respect, it is noted that the imports were substantial and made at low and subsidised prices undercutting those 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. All these elements played an important role in the conclusion of this chapter, i.e. that the imports have caused material injury.

(179) Given the weight of the imports from India 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, thus resulting in notably reducing market share, investments, profitability and return on investment of the Community industry.

(180) The market share held by the Indian importers during the IP is substantial and well above *de minimis* levels. The moderate decrease in volume was not such as to lead to a suggestion that Indian exporters were degraded to a peripheral status and on the verge of being eliminated from the Community market. It is therefore concluded that the subsidised imports from India, taken in isolation, caused material injury to the Community industry. Moreover, for illustration purposes only, it appears that the imports from India have increased again by more than 8 % during the first six months of 2003 when compared to the first semester of 2002, indicating that the apparent downward trend is probably not of a lasting nature.

(181) It was submitted that average subsidisation was 8 % and average undercutting was much higher, while prices charged by the sampled producers increased.

(182) In this respect, it should be noted that the export prices did, in many instances, not include any costs for the design and marketing of the bedlinen, as these services were supplied by the importer in the Community. These costs cannot be reasonably estimated for the like product overall, but taking into account any such costs would result in lower undercutting margins. Also, Community industry prices relate in some instances to branded products, which command a higher price. In addition, Article 8(6) of the basic Regulation specifies that

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the examination shall entail a demonstration that the volume and/or price levels of the subsidised imports are responsible for the impact on the Community industry. Thus, it is not the undercutting which matters ultimately in this context but the price level of the imports. Therefore, it cannot be concluded that the subsidised imports do not cause material injury.

3. **Effects of other factors**

(a) *Allegedly dumped imports originating in Pakistan*

(183) Pakistan constantly increased its market share from 20,8 % in 1999 to 24,7 % in the IP, from 36 000 tonnes in 1999 to 49 400 tonnes during the IP. Given the fact that the average export prices from Pakistan are in the same range as those from India, it must be assumed that Pakistani exports have also caused injury to the Community industry. In this context, it is worth noting that parallel to this anti-subsidy investigation, an anti-dumping investigation has been initiated against the same product originating in Pakistan, which is currently ongoing and which is based on the allegation that Pakistani exports increased their market share by dumping the product concerned into the Community and therefore caused injury to the Community industry. If this is confirmed by the ongoing investigation, appropriate action will be taken in due course.

(184) It is therefore concluded that imports originating in Pakistan are likely to have contributed to the material injury suffered by the Community industry. However, whilst Pakistani imports may also have caused injury, this is not to deny that Indian imports equally caused material injury by themselves.

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

(185) 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 the product concerned originating in Turkey during the IP, which were higher by almost 45 % than those of India and by 34 % than those of Pakistan. It is therefore unlikely that imports originating in Turkey broke the causal link between the subsidised imports from India and the injury suffered by the Community industry.

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

(187) The average price of imports originating in countries other than India and Pakistan increased from EUR 7,18/kg in 1999 to EUR 7,47/kg in 2001 and decreased slightly to EUR 7,40/kg during the IP. Nevertheless, during the IP, these prices were around 34 % higher than the prices of imports from India. Consequently, imports from other third countries did not exert a price pressure on the Community industry to the extent that imports from India 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 subsidised imports from India and the injury suffered by the Community industry.

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(c) *Contraction of demand*

(188) It was claimed that the demand for bedlinen produced by the Community industry has diminished in volume terms as it focused on the upper end of the market, where less sales volume is made. However, as pointed out before, the total EU consumption of bedlinen did not decrease, but rather increased over the period considered. Most of the Community producers have different product lines for different market segments. The upmarket 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 needs 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 subsidised imports from India and the injury suffered by the Community industry.

(d) *Imports by the Community industry*

(189) It was submitted that the Community industry imported cotton-type bedlinen from India and thereby contributed to the injury suffered. However, only one of the sampled Community producers actually imported bedlinen from India during the IP and the sales of these imports generated only a small part of total turnover by this producer (around 10 %). Therefore, imports by the Community industry of the product concerned from India cannot be seen to break the causal link between the subsidised imports from India and the material injury suffered by the Community industry as a whole.

(e) *Export performance by the Community industry*

(190) 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*

(191) The development in productivity has been identified in the injury part of this Regulation. 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**

(192) With a market share of 7,2 % in the IP, the subsidised imports originating in India were substantial and have been made at low and falling prices during a period in which the Community industry suffered material injury in terms of falling market shares, capacity utilisation, investments, profitability, return on investment and cash flow.

(193) Imports from Pakistan are likely to have also caused injury to the Community industry. However, this fact does not suggest that the injury inflicted by imports from India becomes immaterial. 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 Indian imports and the injury suffered by the Community industry. The substantial volume and the aggressively low prices of the Indian exports taken in isolation are an independent cause of the material injury suffered by the Community industry. Therefore, none of the other

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potential injury causes are such as to reverse the fact that there is a genuine and substantial causal link between the subsidised imports and the material injury.

(194) 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 subsidised imports, it is concluded that the imports from India have caused material injury to the Community within the meaning of Article 8(6) of the basic Regulation.

## G. COMMUNITY INTEREST

### 1. General remarks

(195) It was examined whether, despite the conclusion on injurious subsidisation, compelling reasons existed that could lead to the conclusion that it was not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 31(1) of the basic Regulation, 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

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

(197) It is considered that the imposition of measures will restore fair competition to 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.

(198) 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 compete effectively with imports from third countries. Some companies would have to cease production and lay off their employees.

(199) It is therefore concluded that the imposition of countervailing measures is in the interest of the Community industry.

### 3. Importers and users

(200) Importers and users mentioned in the complaint as well as all known associations were sent a questionnaire. The Commission received only one questionnaire reply from an unrelated importer of the product concerned into the Community.

(201) Sales of the product concerned with origin in India constitute less than 20 % of the total turnover of this company. The total profitability of the company is around 10 %. Given the fact that only little information was available, it was not possible to analyse the likely effect of proposed measures on importers and users as a whole. However, taking into account that only moderate duties are envisaged and many countries are not concerned by either anti-dumping duties or countervailing duties, the impact of the imposition of countervailing duties can be considered as minor.

(202) The Commission received no questionnaire replies from users but some arguments were raised in a submission by Ikea and by the Foreign Trade Association.

(203) It was submitted that the Community industry is not in a position to satisfy the whole demand for bedlinen in the Community. It has to be recalled that measures are not intended to prevent

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imports into the Community but to ensure that they are not made at injurious subsidised prices. Imports from various origins will continue to satisfy a significant part of the Community demand. As only moderate countervailing duties are envisaged and many countries are not concerned by anti-dumping duties or countervailing duties, no shortage of supply is expected.

(204) It was claimed that cheap imports of bedlinen are necessary for the final consumer as well as 'institutional' users such as hotels, hospitals, etc., as products at 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. In addition, only moderate countervailing duties are envisaged and many countries are not concerned by anti-dumping duties or countervailing duties, which means that alternative sources of supply will still be available.

### 4. **Conclusion on Community interest**

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

## H. **COUNTERVAILING MEASURES**

### 1. **Injury elimination level**

(206) In order to prevent further injury being caused by the subsidised imports, it is considered appropriate to adopt countervailing measures.

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

(208) Taking into account the average 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 subsidisation. 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 abovementioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

### 2. **Definitive measures**

(209) As the injury elimination level was higher than the countervailing margins established, the definitive measures should be based on the latter. Given that the level of the overall cooperation for India was high (above 90 %), the residual subsidy margin for all other companies was set at the level for the company with the highest individual margin, i.e. 10,4 %.

(210) It was established that two of the companies in the sample, Texcellence Overseas and Jindal Worldwide, are related parties. The investigation revealed that these companies have common shareholders. These two companies should therefore be considered as a single entity for duty collection purposes, and hence, be submitted to the same countervailing duty. Export quantities of the product concerned during the IP to the Community of both companies were used in order to ensure a

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proper weighting. The weighted average countervailing duty for these two companies amounts to 7,8 %.

(211) The following duties therefore apply:

| Company | Rate of duty |
|---|---|
| The Bombay Dyeing and Manufacturing Co., Mumbai,<br>N. W. Exports Limited, Mumbai<br>Nowrosjee Wadia & Sons Limited, Mumbai | 5,3 % |
| Brijmohan Purusottamdas, Mumbai | 6,2 % |
| Divya Textiles, Mumbai | 6,4 % |
| Texcellence Overseas, Mumbai,<br>Jindal Worldwide Ltd, Ahmedabad | 7,8 % |
| Mahalaxmi Exports, Ahmedabad | 9,3 % |
| Pasupati Fabrics, New Delhi | 8,5 % |
| Prakash Cotton Mills Pvt. Ltd, Mumbai | 10,4 % |
| Vigneshwara Exports Ltd, Mumbai | 4,4 % |
| Cooperating companies not in the sample | 7,6 % |
| All other companies | 10,4 % |

(212) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(213) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, this Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates as well as those specified in the Annex to the operative part of this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive countervailing duty is hereby imposed on imports of bedlinen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed originating in India, currently classifiable within CN codes ex 6302 21 00 (TARIC codes 6302 21 00 81 and 6302 21 00 89), ex 6302 22 90 (TARIC code 6302 22 90 19), ex 6302 31 10 (TARIC

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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 the following companies shall be as follows:

| Company | Rate of duty (%) | TARIC additional code |
|---|---|---|
| The Bombay Dyeing and Manufacturing Co., Mumbai, | 5,3 % | A488 |
| N. W. Exports Limited, Mumbai | 5,3 % | A489 |
| Nowrosjee Wadia & Sons Limited, Mumbai | 5,3 % | A490 |
| Brijmohan Purusottamdas, Mumbai | 6,2 % | A491 |
| Divya Textiles, Mumbai | 6,4 % | A492 |
| Texcellence Overseas, Mumbai, | 7,8 % | A493 |
| Jindal Worldwide Ltd, Ahmedabad | 7,8 % | A494 |
| Mahalaxmi Exports, Ahmedabad | 9,3 % | A495 |
| Pasupati Fabrics, New Delhi | 8,5 % | A496 |
| Prakash Cotton Mills Pvt. Ltd, Mumbai | 10,4 % | 8048 |
| Vigneshwara Exports Ltd, Mumbai | 4,4 % | A497 |

3. The rate of duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by the companies listed in the Annex, shall be 7,6 % (TARIC additional code A498).

4. The rate of duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by the companies not specified in paragraphs 2 and 3, shall be 10,4 % (TARIC additional code A999).

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

*Article 2*

Where any new exporting producer in India provides sufficient evidence to the Commission that

— it did not export to the Community the products described in Article 1(1) during the investigation period (1 October 2001 to 30 September 2002) and

— it is not related to any of the exporters or producers in India which are subject to the anti-subsidy measures imposed by this Regulation and

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

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

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*Article 3*

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

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*ANNEX*

| | |
|---|---|
| Ajit Impex | Mumbai |
| ▼M2 | |
| Alok Industries Limited | Mumbai |
| ▼M1 | |
| Alps Industries Ltd | Ghaziabad |
| Ambaji Marketing Pvt. Ltd | Ahmedabad |
| ▼B | |
| Anglo French textiles | Pondicherry |
| Anjal Garments | Ghaziabad |
| Anunay Fab. Pvt. Ltd | Ahmedabad |
| Aravali | Jaipur |
| Ashok Heryani Exports | New Delhi |
| ▼M1 | |
| At Home India Pvt. Ltd | New Delhi |
| ▼B | |
| Atul Impex Pvt. Ltd | Dombivli |
| ▼M1 | |
| Balloons | New Delhi |
| ▼B | |
| Beepee Enterprise | Mumbai |
| ▼M1 | |
| Bhairav India International | Ahmedabad |
| ▼B | |
| Chemi Palace | Mumbai |
| Consultech Dynamics | Mumbai |
| Cotfab Exports | Mumbai |
| Country House | New Delhi |
| Creative Mobus Fabrics Limited | Mumbai |
| Deepak Traders | Mumbai |
| Eleganza Furnishings Pvt. Ltd | Mumbai |
| Emperor Trading Company | Tirupur |
| Estocorp (India) Pvt. Ltd | New Delhi |
| Exemplar International | Hyderabad |
| Falcon Finstock Pvt. Ltd | Ahmedabad |
| ▼M1 | |
| G-2 International export Ltd | Ahmedabad |
| ▼B | |
| Gauranga Homefashions | Mumbai |
| Good Shepherd Health Education & Dispensary | Tamilnadu |
| ▼M1 | |
| Harimann International | Mumbai |
| ▼B | |
| Heirloom Collections (P) Ltd | New Delhi |
| Hemlines Textile Exports Pvt. Ltd | Mumbai |
| Himalaya Overseas | New Delhi |
| Ibats | New Delhi |
| Indian Craft Creations | New Delhi |
| Indo Euro Textiles Pvt. Ltd | New Delhi |
| Intex Exports | Mumbai |
| ▼M1 | |
| Kabra Brothers | Mumbai |
| ▼B | |
| Kanodia Fabrics (International) | Mumbai |
| Karthi Krishna Exports | Tirupur |
| Kaushalya Export | Ahmedabad |
| Kirti Overseas | Ahmedabad |
| La Sorogeeka Incorporated | New Delhi |
| Lalit & Company | Mumbai |
| Madhu Industries Ltd | Ahmedabad |
| Madhu International | Ahmedabad |
| Manubhai Vithaldas | Mumbai |
| Marwaha Exports | New Delhi |
| Milano International (India) Pvt. Ltd | Chennai |
| ▼M1 | |
| Mohan Overseas (P) Ltd | New Delhi |
| ▼B | |
| Nandlal & Sons | Mumbai |
| Natural Collection | New Delhi |
| Pacific Exports | Ahmedabad |
| Pattex Exports | Mumbai |
| Petite Point | New Delhi |
| Pradip Exports | Ahmedabad |
| ▼M1 | |
| Pradip Overseas Pvt. Ltd | Ahmedabad |

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| Prem Textiles | Indore |
| Punch Exporters | Mumbai |
| Radiant Expo Global Pvt. Ltd | New Delhi |
| Radiant Exports | New Delhi |
| Raghuvir Exim Limited | Ahmedabad |
| Ramesh Textiles | Indore |
| Redial Exim Pvt. Ltd | Mumbai |
| S. D. Entreprises | Mumbai |
| Samria Fabrics | Indore |
| Sanskrut Intertex Pvt. Ltd | Ahmedabad |

▼M1

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| Sarah Exports | Mumbai |

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| Shades of India Crafts Pvt. Ltd | New Delhi |
| Shanker Kapda Niryat Pvt. Ltd | Baroda |
| Shivani Exports | Mumbai |
| Shrijee Enterprises | Mumbai |

▼M1

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| S.P. Impex | Indore |

▼B

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|---|---|
| Starline Exports | Mumbai |
| Stitchwell Garments | Ahmedabad |
| Sumangalam Exports Pvt. Ltd | Mumbai |
| Sunny Made-ups | Mumbai |
| Surendra Textile | Indore |
| Suresh & Co. | Mumbai |

▼M1

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| ►C1 Synergy Lifestyles Pvt. Ltd ◄ | Mumbai |

▼B

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|---|---|
| Syntex Corporation Pvt. Ltd | Mumbai |

▼M2

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|---|---|
| Texel Industries | Chennai |

▼M1

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|---|---|
| Texmart Import export | Ahmedabad |

▼M2

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|---|---|
| Textrade International Private Limited | Mumbai |

▼B

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|---|---|
| The Hindoostan Spinning & Weaving Mills Ltd | Mumbai |
| Trend Setters | Mumbai |
| Trend Setters K.F.T.Z. | Mumbai |
| Utkarsh Exim Pvt Ltd | Ahmedabad |
| V & K Associates | Mumbai |

▼M1

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|---|---|
| Valiant Glass Works Private Ltd | Mumbai |

▼B

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|---|---|
| Visma International | Tamilnadu |
| VPMSK A Traders | Karur |
| V.S.N.C. Narasimha Chettiar Sons | Karur |

▼M2

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|---|---|
| Welspun India Limited | Mumbai |
| Yellows Spun and Linens Private Limited | Mumbai |