COUNCIL REGULATION (EC) No 2239/2003

of 17 December 2003

terminating the partial interim review and the expiry review concerning the anti-dumping measures imposed by Regulation (EC) No 2398/97 on imports of cotton-type bedlinen originating, *inter alia*, in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the 'basic Regulation'), and in particular Article 9 and Article 11(2) and (3) thereof,

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

Whereas:

A. MEASURES IN FORCE

(1) In 1997, by Regulation (EC) No 2398/97 [2], the Council imposed definitive anti-dumping duties ranging from 2,6 % to 24,7 % on imports of cotton-type bedlinen originating, *inter alia*, in India. Following a Panel report as modified by the Appellate Body report adopted in March 2001 on the case 'EC-anti-dumping duties on imports of cotton-type bedlinen from India' by the Dispute Settlement Body of the World Trade Organisation ('WTO'), the Council, in August 2001, by Regulation (EC) No 1644/2001 [3], amended Regulation (EC) No 2398/97 by reducing the duty rate for India and certain Indian companies to a level of between 0 and 9,8 % and suspending their application. In April 2002, the Council, by Regulation (EC) No 696/2002 [4], confirmed the definitive anti-dumping duty imposed on imports of cotton-type bedlinen originating in India by Regulation (EC) No 2398/97, as amended and suspended by Regulation (EC) No 1644/2001.

B. REQUEST FOR REVIEWS

(2) In January 2002, the Commission received a request for an interim review of Regulation (EC) No 2398/97 pursuant to Article 11(3) of the basic Regulation. The request was lodged by the Committee of the Cotton and Allied Textile Industries of the European Union ('Eurocoton' or the 'applicant'), on behalf of producers representing a major proportion of the total Community production of cotton-type bedlinen. The request was based on the fact that the applicant claimed a significant change in circumstances with regard to dumping.

(3) In September 2002, following the publication of a notice of impending expiry [5] of the anti-dumping measures in force, the Commission received a request for review pursuant to Article 11(2) of the basic Regulation from Eurocoton, representing a major proportion of the total Community production of cotton-type bedlinen. The request was based on the grounds that the expiry of the measures would most likely result in continuation or recurrence of dumping and injury to the Community industry.

C. INVESTIGATION

1. PROCEDURE

(4) The Commission examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of an interim review and an expiry review in accordance with the provisions of Article 11(2) and (3) of the basic Regulation. After consultation of the Advisory Committee, the Commission initiated two investigations by notices published in the *Official Journal of the European Communities* [6]. The interim review was limited in scope to the examination of dumping.

(5) The Commission officially advised the applicant, the producers in the exporting country and their representatives of the initiation of the interim review and the expiry review, and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) A number of exporting producers in India, as well as Community producers, Community users and importers/traders, made their views known in writing. All parties who so requested within the time limits specified in the notices of initiation referred to in recital 4 and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

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[1] OJ L 56, 6.3.1996, p. 1; Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 332, 4.12.1997, p. 1; Regulation as last amended by Regulation (EC) No 160/2002 (OJ L 26, 30.1.2002, p. 1).
[3] OJ L 219, 14.8.2001, p. 1.
[4] OJ L 109, 25.4.2002, p. 3.
[5] OJ C 65, 14.3.2002, p. 11.
[6] OJ C 39, 13.2.2002, p. 17 and OJ C 300, 4.12.2002, p. 10.

1.1. **Period of investigation**

(7) The period of investigation for dumping covered the period from 1 January 2001 to 31 December 2001 (the 'investigation period' or 'IP').

1.2. **Selection of the sample**

(8) In view of the large number of exporting producers in the exporting country concerned, and in conformity with Article 17 of the basic Regulation, it was considered appropriate to use sampling. In order to select a sample, exporting producers in the country concerned were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the proceeding and to provide information on their exports to the Community during the investigation period, domestic turnover and the names and activities of all related companies in the sector of the product concerned. The Indian authorities were also contacted by the Commission in this regard.

(9) Ninety-four exporting producers agreed to be included in the sample and provided the requested information within the deadline. Eight of them were chosen for the sample. The criteria taken into account in the selection of the sample were: the size of the company with regard to export sales to the Community and the fact that the companies had domestic sales. The exporting producers which were not finally included in the sample were informed that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation, i.e. without exceeding the weighted average margin of dumping established for the companies in the sample. The selection of the sample was made in coordination with the representatives of the exporting producers, and with the Indian Government. The Appellate Body Report referred to in recital 1 concluded that the method for calculating amounts for administrative, selling and general costs (the SG & A) and for profits, based on the weighted average of the actual amounts incurred and realised by other exporters or producers, can only be used if data relating to more than one other exporter or producer are available. It was therefore considered paramount to have two companies with domestic sales included in the sample. It should also be noted that of the 94 producers who made themselves known, only two had domestic sales. However, the second company, which at first had agreed to cooperate in this investigation, withdrew its cooperation. The sample had therefore to be modified accordingly and was eventually composed of seven companies, six of which had exclusively export sales and one of which had both export and domestic sales of the like product.

(10) The applicant claimed that the non-cooperation of one of the companies with domestic sales should have entailed the application of the provisions set out in Article 18 of the basic Regulation. In this connection it should be noted that Article 18 of the basic Regulation was indeed applied with respect to this company (see recital 30). Moreover, the sample still remained representative as the non-cooperating company had a very limited export share and, even without this company, the sample still represented 43 % of the exports of the product concerned to the Community during the IP. Furthermore, the non-cooperation of this company did not affect the dumping determination for those companies in the sample. The claim was therefore rejected.

1.3. **Individual examination of companies not selected for the sample**

(11) One cooperating company not selected for the sample requested the calculation of an individual dumping margin in accordance with Article 17(3) of the basic Regulation and accompanied its request with a reply to the questionnaire within the deadline set for this purpose. This request was found to be acceptable in the current investigation.

1.4. **Interested parties and verification visits**

(12) The Commission sent a questionnaire to the sampled companies and received full replies within the deadline. The Commission sought and verified all information it deemed necessary for the purpose of the determination of dumping and carried out verification visits at the premises of the following sampled companies:

— The Bombay Dyeing & Manufacturing Co. Ltd, Mumbai

— Nowrosjee Wadia & Sons, Mumbai

— Prakash Cotton Mills Pvt. Ltd, Mumbai

— Texcellence Overseas, Mumbai

— Vigneshwara Exports Limited, Mumbai

(13) Due to the political situation in India, the on-the-spot verification at the premises of Jindal Worldwide Ltd, Ahmedabad and Mahalaxmi Exports, Ahmedabad had to be cancelled. However, the data provided by these companies have been used, despite the absence of verification. In this respect it should be noted that their export prices were found to be in line with those of the other Indian companies with the same company structure (i.e. mainly companies which only export) which were investigated. In addition, certain checks were made through a number of EU importers (by cross-checking invoices), and no irregularities were found in relation to the export price of Jindal Worldwide Ltd, Ahmedabad and Mahalaxmi Exports, Ahmedabad.

(14) The Commission has also carried out a verification visit at the premises of Divya Textiles, Mumbai, which requested an individual examination, as mentioned in recital 11 above.

2. PRODUCT UNDER CONSIDERATION

(15) The product concerned is the same as in the original investigation, i.e. certain 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, falling 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), ex 6302 32 90 (TARIC code 6302 32 90 19).

3. LIKE PRODUCT

(16) It was established that the cotton-type bedlinen sold on the Indian market and the cotton-type bedlinen exported from India to the Community were identical, or closely resembling in terms of physical characteristics and end uses. Therefore, these cotton-type bed linens were considered to be like products within the meaning of Article 1(4) of the basic Regulation.

D. **RESULT OF THE INVESTIGATION CONCERNING THE INTERIM REVIEW**

1. NORMAL VALUE

1.1. **Companies in the sample**

(17) It is first recalled that of the seven companies in the sample, only one had domestic sales. Of the six other companies in the sample, one had domestic sales of the general category of products (other cotton-type products).

(18) For the sole company with domestic sales, it was found that none of its types of cotton-type bed linens sold on the domestic market were directly comparable to those exported to the Community, as a result of differences in quality in respect of a multitude of different product types. Furthermore, any adjustments needed in order to ensure the comparability would have had to be based on estimates. Consequently, the normal value had to be constructed on the basis of the manufacturing costs of the product concerned plus its own SG & A and profit on sales made in the ordinary course of trade, in accordance with Article 2(6) of the basic Regulation.

(19) For the other companies, in the absence of domestic sales of the like product, it was first envisaged to use, in accordance with Article 2(1) of the basic Regulation, the domestic prices of the company with domestic sales to establish the normal value. However, no comparison was possible between the product types sold on the domestic market and those exported to the European Union by the other companies. Therefore, for all the other cooperating companies, in the absence of domestic sales of the like product, normal value had also to be constructed.

(20) In light of the above, the manufacturing costs of the product concerned were used to determine the constructed normal value for each company included in the sample, in accordance with Article 2(3) of the basic Regulation. With regard to SG & A and profits, since there was only one company with domestic sales of the like product, the option provided for by Article 2(6)(a) of the basic Regulation, based on the weighted average of the actual amounts determined for other exporters or producers in respect of production and sales of the like product in the domestic market of the country of origin, could not be used.

(21) For the other exporting producers, including the company with domestic sales of the same general category of products, the SG & A were established in accordance with Article 2(6)(c) of the basic Regulation, taking into account the conclusions of the reports adopted by the Dispute Settlement Body of the WTO. Consequently, the SG & A were determined on the basis of the weighted average of the SG & A of the sole company with domestic sales of the like product and the SG & A of the sole company having sales of the general category of products (other cotton-type products) on the domestic market.

(22) As far as the amounts for profit are concerned, for the company with domestic sales of the same general category of products several approaches were examined for the establishment of a reasonable profit when constructing the normal value. The first approach was to use its own profits. However, this company was operating at a loss and therefore this method could not be used.

(23) The Indian exporting producers claimed that, according to Article 2(6)(c) of the basic Regulation, the profit cap of the company with domestic sales and the company selling the same general category of products on the domestic market should have been used. Considering that such companies were operating at a loss, the Indian exporting producers argued that the profit cap was therefore a nil profit.

(24) According to Article 2(3) of the basic Regulation, when constructing normal value, a reasonable amount for profits should be added. Therefore, a nil profit cannot be considered to be a cap.

(25) Finally, and in the absence of any other source of data as regards profit, for all Indian exporting producers profit was established at a level of 5 %, which was the profit used in the original investigation as the Community industry's target profit. The applicant claimed that this profit margin was too low.

(26) However, the applicant did not advance any reasons why the 5 % profit figure was too low and why another profit margin would be more reasonable or representative. Moreover, there was no usable information on the profits of Indian domestic sales of the product concerned or of the products belonging to the same general category. Therefore, and pursuant to Article 2(6)(c) of the basic Regulation, it was considered reasonable to use the profit margin determined in the original investigation, representing the profit that the Community industry could expect to achieve on its local market in the absence of any injurious dumping.

1.2. **Company with individual examination**

(27) For this company, normal value was established by using the methodologies described in recitals 19, 20, 21 and 25.

2. EXPORT PRICE

(28) Since all export sales of the product under consideration were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of the price paid or payable for the product concerned when sold for export from India to the Community.

3. COMPARISON

(29) For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences in factors which were claimed and demonstrated to affect prices and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation, in respect of freight, handling and loading, transport, credit costs, insurance, commission and packing.

4. DUMPING MARGIN

(30) The applicant claimed that the exception provided for in Article 2(11) of the basic Regulation, which allows the comparison between a weighted average normal value and the prices of all individual export transactions to the Community, should have been used for some of the companies in the sample. However, it was established that the conditions underlying the use of this method, and in particular the existence of a pattern of export prices which differs significantly among different purchasers, regions or time periods, were not met. Therefore, in accordance with Article 2(11) of the basic Regulation, the margin of dumping was established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Community.

(a) *Cooperating producers in the sample*

The definitive dumping margins expressed as a percentage of the cif import price at the Community border are the following:

— The Bombay Dyeing & Manufacturing Co. and Nowrosjee Wadia & Sons (related company)	26,2 %
— Mahalaxmi Exports	0 %
— Prakash Cotton Mills Pvt. Ltd	0 %
— Texcellence Overseas and Jindal Worldwide Ltd (related company)	0 %
— Vigneshwara Exports Limited	0 %

(b) *Other cooperating producers not included in the sample*

As explained in recital 34, for all other cooperating producers not included in the sample the dumping margin is 0 %.

(c) *Cooperating company with individual examination*

— Divya Textiles	0 %

(d) *Non-cooperating companies*

As set out in recital 9, one company did not cooperate. Since there are no indications that this company did not dump, and in order not to give a bonus for non-cooperation, the dumping margin was established on the basis of the most exported amongst the most dumped product types exported to the Community by Bombay Dyeing & Manufacturing Co., i.e. 31,4 %.

E. **GROUNDS FOR TERMINATING THE INTERIM REVIEW WITHOUT THE IMPOSITION OF MEASURES**

(31) The current interim review should be terminated without the imposition of measures because only a small part of imports of the product concerned originating in India was dumped and this negligible volume of dumped imports, which is not likely to change significantly in future, cannot cause injury. This follows from the analysis set out below.

1. THE VAST MAJORITY OF IMPORTS OF THE PRODUCT CONCERNED ORIGINATING IN INDIA WERE NOT DUMPED

(32) With regard to the companies in the sample, the investigation established the existence of dumping for only one of these companies (Bombay Dyeing), accounting for less than 8 % of total exports of the product concerned originating in India to the Community during the IP. Moreover, and as stated above, one company did not cooperate in the proceeding and its exports were considered to be dumped (see recital 30(d). However, the exports by this latter company of the product concerned to the Community during the IP represented only 0,4 % of total exports originating in India.

(33) The findings for the aforementioned two companies are in contrast to the situation of the remaining four companies in the sample as well as the exporting producer granted individual treatment. None of these five companies was found to be dumping. Moreover, their situation was fundamentally different from that of Bombay Dyeing and of the non-cooperating company because they produced the product concerned exclusively for export. The non-dumped imports in the sample represented around 30 % of total exports originating in India.

(34) Furthermore, the cooperating exporters not included in the sample and not individually examined produced exclusively for export (based on the information received in response to the sampling questions in the notice of initiation). In other words, their company structure corresponds to that of the companies mentioned in recital 33. This strongly suggests that their exports were not dumped either.

(35) It follows from the above that more than 90 % of Indian exports of the product concerned to the Community during the IP were not dumped.

2. THE SMALL VOLUME OF DUMPED IMPORTS IN THIS CASE CANNOT CAUSE ANY INJURY

(36) The significant difference between the dumping practices found in the original investigation and that found in the current one, prompts the question of whether the causal link established in the original case could still be assumed to be present on the basis of the present findings.

(37) First, it was found that less than 8 % of imports of the product concerned originating in India during the IP was dumped. These imports represented a market share of less than 1 % during the IP or an import share of less than 3 % of the total imports from all sources. In other words, the volume of dumped imports is negligible, considering the normally applicable thresholds in the basic Regulation and in the WTO Anti-dumping Agreement. Second, the investigation found that, for the reasons set out in recitals 32 to 34, more than 90 % of the imports from India were non-dumped. Under these circumstances, it is very unlikely that any material injury resulted from these imports during the IP. Furthermore, it cannot be reasonably assumed that this situation would change if measures were not imposed, bearing in mind the fact that during a considerable part of the IP no duties were in force and that the volume of non-dumped imports from India was always significant.

(38) Therefore, based on the findings of this review, the causal link established between dumping and injury in the original case can not be assumed to be present in this investigation, although the current partial interim review did not expressly include a review of the causality established in the original case.

(39) Additionally, the measures which would result from the outcome of this investigation (see recital 30) would be ineffective, as a major part of the imports from India would not be covered.

3. CONCLUSION

(40) In view of the above, it is necessary to terminate the interim review concerning imports of cotton-type bedlinen originating in India without the imposition of anti-dumping duties.

F. **CONSEQUENCES OF THE EXPIRY REVIEW**

(41) In the light of the results of the interim review leading to the expiry of the anti-dumping measures imposed by Regulation (EC) No 2398/97, the procedure concerning the expiry review should be terminated accordingly.

G. **DISCLOSURE**

(42) The interested parties were informed of the facts and considerations on the basis of which it was intended to recommend the termination of the present partial interim review and the expiry review without the imposition of measures and were given an opportunity to comment. Their comments were taken into account and, where appropriate, the findings were modified accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The interim review pursuant to Article 11(3) and the expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 concerning imports of cotton-type bedlinen originating in India are hereby terminated without the imposition of measures.

Article 2

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

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

Done at Brussels, 17 December 2003.

For the Council
The President
G. ALEMANNO