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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2143/2004

of 13 December 2004

amending Regulation (EC) No 74/2004 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⁾ (the 'basic Regulation'),

Having regard to Article 2 of Council Regulation (EC) No 74/2004 of 13 January 2004 imposing a definitive countervailing duty on imports of cotton-type bedlinen originating in India⁽²⁾,

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

Whereas:

A. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 74/2004, the Council imposed a definitive countervailing duty on imports into the Community of cotton-type bedlinen 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) and ex 6302 32 90 (TARIC code 6302 32 90 19), originating in India. Given the large number of cooperating parties, a sample of Indian exporting producers was selected and individual duty rates ranging from 4,4% to 10,4% were imposed on the companies included in the sample, while other cooperating companies not included in the sample were attributed a duty rate of 7,6%. A duty rate of 10,4%

was imposed on companies which either did not make themselves known or did not cooperate with the investigation.

(2) Article 2 of Regulation (EC) No 74/2004 stipulates that 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) (the 'first criterion') and it is not related to any of the exporters or producers in India which are subject to the anti-subsidy measures imposed by that Regulation (the 'second criterion'), 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 (the 'third criterion'), then Article 1(3) of that Regulation can be amended by granting the new exporting producer the duty rate applicable to the cooperating companies not included in the sample, i.e. 7,6%.

B. NEW EXPORTERS/PRODUCERS' REQUESTS

(3) Twenty-four Indian companies have applied not to be treated differently from the companies which cooperated in the original investigation but were not included in the sample ('newcomer status').

(4) Two Indian companies requesting the newcomer status did not provide a questionnaire reply. It was therefore not possible to verify whether these companies fulfilled the criteria set out in Article 2 of Regulation (EC) No 74/2004, and their request had to be rejected.

(5) Two requests for newcomer status were received too late and therefore no conclusion could be reached on these requests by the date of adoption of this Regulation.

(6) The remaining twenty companies replied to the questionnaire intended to verify that the companies complied with the provisions of Article 2 of Regulation (EC) No 74/2004.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 12, 17.1.2004, p. 1.

- (7) The evidence provided by thirteen of the abovementioned Indian exporters/producers is considered sufficient to grant these new companies the duty rate applicable to the cooperating companies not included in the sample (i.e. 7,6%) and therefore to add these thirteen Indian companies to the list in the Annex (the 'Annex') of Council Regulation (EC) No 74/2004.
- (8) As far as the remaining seven Indian exporters/producers are concerned, two of them were related to companies subject to the current countervailing measures, three exported the product concerned to the Community during the original investigation period (i.e. from 1 October 2001 to 30 September 2002), one could not provide any invoice or evidence that it had actually exported to the Community the product concerned after the original investigation period or that it had entered into an irrevocable contractual obligation to export the product concerned to the Community.
- (9) Finally, it is noted that one request could not be dealt with in the present context, since the evidence provided by the applicant company needs further examination.
- (10) Under these circumstances, it was considered that for the six companies referred to in recital (8), at least one of the criteria set out in Article 2 of Regulation (EC) No 74/2004 was not fulfilled. Therefore, their claim had to be rejected.
- (11) Companies for which the newcomer status was not accepted were informed of the reasons of that decision and given an opportunity to make their views known in writing.
- (12) The two companies related to companies subject to the current countervailing measures claimed in one case that their related company did not exist anymore, and in the second case that they were indeed expecting to be subject to the same duty rate as their related company.
- (13) It was considered in the first case that the fact that the related company did not exist anymore was indeed a significant element in the current procedure, and that in this case it could not be considered that the newcomer was not respecting the second criterion. It was therefore decided that this company should also be subject to the duty rate applicable to the cooperating companies not included in the sample (i.e. 7,6%) and therefore be added to the list in the Annex.
- (14) In the second case, where the applicant company is related to a company under measures, it was found that this should not automatically deprive the company of being subject to the weighted average duty margin for cooperating companies not included in the sample. Indeed, it was examined whether both related companies, if considered together, would have been selected in the sample of exporting producers according to the selection criteria specified in recital (11) of Regulation (EC) No 74/2004. Since this appeared not to be the case, the relationship between both companies does not affect the findings of the above mentioned Regulation. On these grounds, and given the Commission's consistent practice to consider all related companies as one entity subject to the same duty, it was decided that this company should also be subject to the duty rate applicable to the cooperating companies not included in the sample (i.e. 7,6%) and therefore be added to the list in the Annex.
- (15) All arguments and submissions made by interested parties were analysed and duly taken into account when warranted,

HAS ADOPTED THIS REGULATION:

Article 1

The following companies shall be added to the list of exporters/producers from India listed in the Annex of Regulation (EC) No 74/2004:

'Alps Industries Ltd	Ghaziabad
Ambaji Marketing Pvt. Ltd	Ahmedabad
At Home India Pvt. Ltd	New Delhi
Balloons	New Delhi
Bhairav India International	Ahmedabad
G-2 International export Ltd	Ahmedabad
Harimann International	Mumbai
Kabra Brothers	Mumbai
Mohan Overseas (P) Ltd	New Delhi
Pradip Overseas Pvt. Ltd	Ahmedabad
Sarah Exports	Mumbai
S.P. Impex	Indore
Synergy	Mumbai
Texmart Import export	Ahmedabad
Valiant Glass Works Private Ltd	Mumbai

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, 13 December 2004.

For the Council

The President

B. R. BOT
