

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 454 final

Brussels, 16.11.1994

Proposal for a
COUNCIL REGULATION (EC)
amending Regulation (EEC) No 830/92 by repealing the anti-dumping
duty on imports of certain polyester yarns originating in India

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By Regulation (EEC) No 830/92⁽¹⁾, a definitive anti-dumping duty was imposed on imports of certain polyester yarns originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey.
2. In December 1992, the Commission initiated a review of this Regulation in respect of newcomer exporters in India who requested such a review according to recital 60 of the said Regulation.
3. The Commission has limited the scope of the review to the changed circumstances with respect to dumping since no request for review of the original injury findings was made and no indication was received that the circumstances of injury had changed.
4. Since the alleged changed circumstances have put into question the continuing validity of the original findings regarding dumping and also the continuing representativity of the sample used to establish normal value and export prices, the Commission considered that a review of the dumping established for all Indian producers was warranted.
5. In view of the large number of exporters concerned, it was considered appropriate to establish normal value and export price on the basis of a sample of companies in accordance with Article 2(13) of the basic Regulation.
6. The facts finally established show that the dumping margins, i.e. the amounts by which normal values, as established, exceeds the price for export to the Community, are insignificant or non-existent and should be regarded as *de minimis*.
7. In these circumstances, the Commission proposes that since the dumping margins established are *de minimis*, Regulation (EEC) No 830/92 should be amended and the duties imposed on imports of the product concerned from India should be repealed.

⁽¹⁾ OJ No L 88, 3.4.1992, p. 1.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Community⁽¹⁾, as last amended by Regulation (EC) No 522/94⁽²⁾, and in particular Article 14 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee;

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Regulation (EEC) No 830/92⁽³⁾, the Council imposed a definitive anti-dumping duty on imports of certain polyester yarn falling within CN codes 5509 21 10, 5509 21 90, 5509 22 10, 5509 22 90, 5509 51 00 and 5509 53 00 originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey.
- (2) In recital 60 of Regulation (EEC) No 830/92 the Council noted that the Commission would be ready to initiate without delay a review proceeding for the exporters who supplied sufficient evidence to the Commission that they had not exported the products concerned to the Community during the original investigation period (1 January to 31 December 1989), that they only started such exports after the said period or had a firm intention of doing so and that they were not related to, or associated with, any of the companies subject to the anti-dumping duty (so-called newcomers).

B. REVIEW

- (3) Thirty Indian companies made themselves known to the Commission, claiming that they had not exported the product concerned during the investigation period and had only commenced doing so after that period. They also claimed that they were not related to any of the companies involved in the original investigation subject to the anti-dumping duties and requested a newcomer review be opened.

⁽¹⁾ OJ No L 209, 2.8.1988, p. 1.

⁽²⁾ OJ No L 66, 10.3.1994, p. 10

⁽³⁾ OJ No L 88, 3.4.1992, p. 1.

- (4) On request, these companies provided evidence of the facts they alleged. The evidence provided by seventeen of the producers concerned has been considered sufficient to justify the initiation of a review in accordance with the provisions of Articles 7 and 14 of Regulation (EEC) No 2423/88 (hereinafter referred to as "the basic Regulation") and the Commission, after consultation of the Advisory Committee, initiated⁽⁴⁾ a review of Regulation (EEC) No 830/92 with regard to these producers.
- (5) The notice of initiation also made provision for an extension of the review to any other producer in India, where warranted.
- (6) No request for review of the original injury findings was made and no indication was received that the circumstances of injury as originally established have changed.
- (7) In the course of the investigation it was found that:
 - (i) there had been a substantial increase in imports into the Community of the product concerned, (from 3 000 tons in the original investigation period to 11 000 tons in the year 1992), which could only be attributed to those producers concerned by the original investigation or other unknown companies;
 - (ii) export prices on average had decreased by more than 25% since 1989;
 - (iii) the Indian rupee over the same period had devalued by 70%;
 - (iv) the Indian economy had been progressively liberalized leading to the removal of numerous internal barriers to trade, of taxes and of refund schemes.
- (8) The potential impact of the two last elements on the price of the like product on the domestic market (increase in price of imported raw materials and certain reductions in import taxes) and the general development of the export price, put into question the continuing validity of the original findings regarding dumping, based on the situation in 1989, and the increased volume of exports cast doubt on the continuing representativity of the sample used at that time to establish normal value and export price.
- (9) In these circumstances, the Commission considered that a review of the dumping established for all Indian producers was warranted.

C. PRESENT PROCEDURE

- (10) In view of the large number of exporters concerned, some 43 from the original investigation and 17 newcomers, it was considered appropriate, as in the original investigation, to establish normal value and export price on the basis of a sample of companies in accordance with Article 2(13) of the basic Regulation.

⁽⁴⁾ OJ No C 339, 22.12.1992, p. 2.

- (11) With a view to ensuring that the results yielded by this sampling procedure would not be significantly different from that which would have resulted from an investigation of all Indian producers, the selection of this sample was based, in accordance with consistent practice, on the criteria of volume of export and domestic sales of the like product, product-type mix both in India and the Community, size of the companies and their locations. On this basis, 5 producers were selected representing, in total, approximately 33% of the exports from India to the Community of the product concerned.
- (12) As in the original investigation, the Synthetic and Rayon Textile Export Promotion Council (SRTEPC), representing virtually all exporters in India of the product concerned, was informed of the companies selected, the criteria used and the intention of the Commission to apply the weighted average result of the investigation of the sample to all the Indian companies considered in the proceeding. Whilst the SRTEPC raised no objection to the sample or this methodology, three Indian producers maintained a request that individual dumping calculations be carried out for them.
- (13) As individual consideration of these three Indian producers was not unduly burdensome and did not delay the investigation, the Commission investigated these three companies separately.
- (14) The Commission carried out on-the-spot investigations at the premises of the following companies:

Sample companies:

**Indo Rama Synthetics (India) Ltd
Rajasthan Textile Mills (prop. Sutlej Cotton Mills)
The Eastern Spinning Mills Industries Ltd
Sree Valliappa Textiles Ltd
Coats Viyella (India) Ltd**

Companies requesting individual investigation:

**Vardhman Spinning & General Mills Ltd
Soundararaja Mills Ltd
Deepak Spinners Ltd**

D. RESULT OF THE INVESTIGATION

(1) Normal value

- (15) Normal value was generally established on the basis of the comparable price actually paid or payable in the ordinary course of trade for the like product in India.

(16) Where a particular product type exported to the Community was not sold on the domestic market or where such sales were in insufficient quantities or were made at a loss, normal value was constructed on the basis of the cost of production plus a reasonable profit margin. The selling, general and administrative expenses included in the cost of production and profit margins were calculated by reference to the expenses incurred and the profits realised by the exporter concerned on profitable sales of other types of the like product sold in sufficient quantities on the domestic market.

(17) In one case it was not possible to follow this approach to establish a margin of profit as one exporter was found to have had no sales of the like product on the domestic market during the investigation period. In this case, the profit margin used was the weighted average profit realised on profitable sales of other types of the like product on the domestic market by all the other exporters investigated.

(2) Export price

(18) Export prices were determined on the basis of the prices actually paid or payable for the product concerned sold for export to the Community.

(3) Comparison

(19) The normal value by product type was compared with the export prices for the corresponding type on a transaction-by-transaction basis at an ex-works level and for the same level of trade. For the purpose of a fair comparison normal value was adjusted in accordance with the provisions of Article 2(9) and (10) of the basic Regulation to take account of differences affecting price comparability and relating to import charges and indirect taxes and differences in selling expenses arising from conditions and terms of sale. Adjustments claimed for the above differences were limited to those for which satisfactory evidence was submitted that they had a direct relationship to the sales under consideration. In particular, allowance was granted under Article 2(10)(b) of the basic Regulation in respect of import charges on raw materials physically incorporated in the like product, when destined for consumption in India and not collected in respect of the product exported to the Community.

(4) Dumping margins

(20) The examination of the facts showed that the dumping margins, i.e. the amounts by which normal values, as established, exceeded the prices for export to the Community, were insignificant or non-existent and should therefore be regarded as de minimis.

(21) The weighted average margins of dumping for each exporter expressed as a percentage of the CIF Community frontier price were as follows:

(i) Sample companies:

Indo Rama Synthetics (India) Ltd	1.97%
Rajasthan Textile Mills (prop. Sutlej Cotton Mills)	0.01%
The Eastern Spinning Mills Industries Ltd	0.00%
Sree Valliappa Textiles Ltd	0.67%
Coats Viyella (India) Ltd	0.32%
Weighted average	0.94%

(ii) Companies requesting individual investigation:

Vardhman Spinning & General Mills Ltd	0.80%
Soundararaja Mills Ltd	0.26%
Deepak Spinners Ltd	0.00%

In view of the fact that the dumping margins established were all below 2% they should be regarded as de minimis.

E. AMENDMENT OF THE REVIEWED MEASURES

- (22) It is therefore concluded that, as the dumping margins established are de minimis, Regulation (EEC) No 830/92 should be amended and the duties imposed on imports of the product concerned from India should cease to apply.
- (23) The exporters in India and the complainant have been informed of these findings.
- (24) Since the review is limited to Indian producers, it does not affect the date on which the duties imposed on other countries by Regulation (EEC) No 830/92 will expire pursuant to Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

Article 1 of Regulation (EEC) No 830/92 is amended as follows:

1. In paragraph 1, the word "India" is deleted.
2. In paragraph 2, the line commencing "India" and the list of companies under the heading "INDIA" are deleted.

Article 2

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

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

Done at Brussels,

**For the Council
The President**

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