



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.02.1997

COM(97) 44 final

Proposal for a

COUNCIL REGULATION (EC)

**amending Council Regulation (EEC) No 738/92 of 23 March 1992 imposing
a definitive anti-dumping duty on imports of cotton yarn originating
in Brazil and Turkey**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. According to Article 11(4) of the Council Regulation (EC) No 384/96, in all cases where sampling has been used, the possibility of a new exporter review under that provision is excluded. The consequence is that the residual duty is applied to all new exporters in these instances. In cases where no sampling has been applied, however, the new exporter, pursuant to Article 11(4), can seek a review in order to receive an individual duty.
2. In order to mitigate the effects of the above situation, an article whereby new exporters may, under certain requirements, be subject to the average duty resulting from the sample, could be included in Regulations adopting definitive measures where sampling has been used to calculate dumping. In this way, these companies will receive the same treatment as was given to co-operating companies not included in the sample during the investigation.

3. In implementing such an article, when a firm provides sufficient evidence of being a genuine new exporter (and subject to an assessment of its new exporter status), the Commission will consult the Anti-dumping Advisory Committee in order to propose to the Council that the enterprise be added to the list of the companies subject to the weighted average duty in the regulation imposing measures.
4. Council Regulation (EEC) No 738/92 imposed a definitive anti-dumping duty on imports of cotton yarn originating, *inter alia*, in Turkey. Sampling was used in the investigation that led to the imposition of duties.
5. In application of the above, it is proposed the Council adopt the Regulation annexed amending Council Regulation (EEC) No 738/92, in order to include an article whereby exporters which satisfy the definition of a new exporter as set out in the second paragraph of Article 11(4) can be assigned the weighted average duty.

COUNCIL REGULATION (EC) No

of

**amending Council Regulation (EEC) No 738/92 of 23 March 1992 imposing
a definitive anti-dumping duty on imports of cotton yarn originating
in Brazil and Turkey.**

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 1995¹ on
protection against dumped imports from countries not members of the European
Community.**

**Having regard to the proposal from the Commission, after consulting the Advisory
Committee,**

Whereas:

¹ OJ No L 56, 6.3.1996, p. 1.

A. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EEC) No 738/92², imposed definitive anti-dumping duties on imports of cotton yarn falling within CN Codes 5205 11 00 to 5205 45 90 and 5206 11 00 to 5206 45 90 originating, *inter alia*, in Turkey. Sampling was applied to Turkish exporters, and individual duties ranging from 4,9% to 12.1% were imposed on the companies in the sample, while other co-operating companies not included in the sample received a weighted average duty of 9%. A duty of 12.1% was imposed on companies which either did not make themselves known or did not co-operate in the investigation.

B. AMENDMENT

(2) In accordance with the provisions of Article 11(4) of the Council Regulation (EC) No 384/96, a new exporter's review to determine individual dumping margins could not be initiated in this proceeding, as sampling was used in the original investigation. However, in order to ensure equal treatment between any new exporters and the co-operating companies not included in the sample during the original investigation, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4).

² OJ No L 82, 27.3.1992, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph shall be added to Article 1 of Council Regulation (EEC) No 738/92:

'6. Where any party provides sufficient evidence to the Commission that it did not export the goods described in Article 1(1) during the investigation period, that it is not related to any exporter or producer subject to the measures imposed by this Regulation and that it has exported the goods concerned after the investigation period, or that 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(2) by adding that party to Article 1(2).'

Article 2

This Regulation shall enter into force on the day following 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,

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DOCUMENTS

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