




International Trade Administration Commission of South Africa

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## **Report No. 13**

# **Review of the anti-dumping duties on certain bed linen originating in Malawi and exported by Crown Fashions Limited: Final determination**

The International Trade Administration Commission of South Africa herewith presents its **Report No. 13: REVIEW OF THE ANTI-DUMPING DUTIES ON CERTAIN BED LINEN ORIGINATING IN MALAWI AND EXPORTED BY CROWN FASHIONS LIMITED: FINAL DETERMINATION**



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**PRETORIA**

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## **INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA**

### **REVIEW OF THE ANTI-DUMPING DUTIES ON CERTAIN BED LINEN ORIGINATING IN MALAWI AND EXPORTED BY CROWN FASHIONS LIMITED: FINAL DETERMINATION**

#### **SYNOPSIS**

In accordance with the provisions in Article 11.1 read together with Article 11.2 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury and the authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

On 04 April 2003, the Board on Tariffs and Trade (the Board) formally initiated a review of the anti-dumping duty on certain bed linen originating in or imported from Malawi. Notice of the initiation of the investigation was published in Notice No. 962 of *Government Gazette* No. 24620.

The investigation was initiated after the Board considered that there was sufficient evidence to show that certain bed linen originating in Malawi and exported by Crown Fashions Limited (the Exporter) was not exported at dumped prices to the Southern African Customs Union (SACU).

Comments on the non-confidential petition were received from Texfed, Berg River Textiles, Frame Textile Group, Continental Linen Co. and the Malawi Ministry of Commerce and Industry, which were taken into consideration by the Board in its preliminary determination.

On 30 May 2003 the Board made a preliminary decision that dyed fitted sheets and dyed pillowcases originating in Malawi and imported from Crown Fashions were dumped on the SACU market and that printed duvet covers originating in Malawi and imported from Crown Fashions were not dumped on the SACU market.

The International Trade Administration Commission of South Africa (the Commission) sent out "essential facts" letters containing reasons for the Board's preliminary decision to all interested parties. After considering all parties' comments in respect of the "essential facts" letters, the Commission made a final determination that dyed fitted sheets and dyed pillowcases originating in Malawi and imported from Crown Fashions were dumped on the SACU market and that printed duvet covers originating in Malawi and imported from Crown Fashions were not dumped on the SACU market.

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on bed linen originating in or imported from Malawi, be amended to read as follows:

Tariff subheading	Description	Originating in or imported from	Anti-dumping duty
6302.22	Bed linen of man-made fibres (excluding knitted or crocheted bed linen), printed, excluding duvet covers imported from Crown Fashions Limited	Malawi	70.41%
6302.32	Bed linen of man-made fibres (excluding knitted or crocheted bed linen), excluding fitted sheets and pillowcases imported from Crown Fashions Limited	Malawi	98.13%
	Fitted sheets of man-made fibres (excluding knitted or crocheted bed linen), imported from Crown Fashions Limited	Malawi	3.3%
	Pillow cases of man-made fibres (excluding knitted or crocheted bed linen), imported from Crown Fashions Limited	Malawi	26.0%

## **1. PETITION AND PROCEDURE**

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### **1.1 LEGAL FRAMEWORK**

This investigation was conducted in accordance with the International Trade Administration Act, 71 of 2002 (ITA Act), the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement).

In accordance with the provisions in Article 11.1 read together with Article 11.2 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury and the authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

### **1.2 EXPORTER**

A complete review questionnaire was submitted by Crown Fashions Limited (Crown Fashions), being a manufacturer of the subject product in Malawi.

### 1.3 INVESTIGATION PROCESS

On 04 April 2003, the Board on Tariffs and Trade (the Board) formally initiated a review of the anti-dumping duties on certain bed linen originating in or imported from Malawi and manufactured by Crown Fashions. Notice of initiation of the investigation was published in Notice No. 962, of *Government Gazette* No.24620 dated 04 April 2003.

The investigation was initiated after the Board considered that there was sufficient evidence to show that certain bed linen originating in Malawi and exported by Crown Fashions was not dumped on the SACU market.

All known interested parties were informed and requested to respond to the non-confidential summary of the petition.

Comments to the non-confidential summary of the petition were received from Texfed, Berg River Textiles, Frame Textile Group, Continental Linen Co. and the Malawi Ministry of Commerce and Industry.

The information submitted by the Exporter was verified on 5,6 and 7 May 2003.

On 30 May 2003, the Board made a preliminary decision that dyed fitted sheets and dyed pillowcases originating in Malawi and imported from Crown Fashions were dumped on the SACU market, and that printed duvet covers originating in Malawi and imported from Crown Fashions were not dumped on the SACU market.

"Essential facts" letters were sent to all interested parties. After considering all parties' comments in respect of the "essential facts" letters, the Commission made a final determination that dyed fitted sheets and dyed pillowcases originating in Malawi and imported from Crown Fashions were

dumped on the SACU market and that printed duvet covers originating in Malawi and imported from Crown Fashions were not dumped on the SACU market.

#### **1.4 INVESTIGATION PERIOD**

The period of investigation (POI) with regard to dumping was from 01 April 2000 to 31 March 2001.

#### **1.5 PARTIES CONCERNED**

##### **1.5.1 Exporters/Foreign Manufacturers**

The review questionnaire was submitted by Crown Fashions Limited.

##### **1.5.2 SACU industry**

SACU industry consists of a number of manufacturers, of which some are represented by Texfed.



## **2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES**

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### **2.1 SUBJECT PRODUCTS**

#### **2.1.1 Description**

The subject product is described as follows:

- printed duvet covers
- printed fitted sheets
- printed pillow cases
- printed night frills
- sets consisting of duvet covers, pillowcases, fitted sheets and night frills of man-made fibres (excluding knitted and crocheted bed linen), classifiable under tariff sub-heading 6302.22.
  
- dyed duvet covers
- dyed fitted sheets
- dyed pillow cases
- dyed night frills
- sets consisting of duvet covers, pillowcases, fitted sheets and night frills of man-made fibres (excluding knitted and crocheted bed linen), classifiable under tariff sub-heading 6302.32.

#### **2.1.2 Application/end use**

The subject product is used as bed linen.

## 2.1.2 Tariff classification

The subject product is classifiable as follows:

Tariff sub-heading	Description	Unit	Rate of duty		
			General	EU	SADC
<b>63.02</b>	<b>Bed Linen, Table linen, Toilet Linen and Kitchen Linen</b>				
6302.2	- Other bed linen, printed:				
6302.22	= Of man-made fibres	kg	30% with a maximum of 3000c/kg	30%	18%

Tariff sub-heading	Description	Unit	Rate of duty		
			General	EU	SADC
<b>63.02</b>	<b>Bed Linen, Table linen, Toilet Linen and Kitchen Linen</b>				
6302.3	- Other bed linen:				
6302.32	= Of man-made fibres	kg	30% with a maximum of 3000c/kg	30%	18%

The subject product is subject to the following anti-dumping duties:

Tariff subheading	Description	Originating in or imported from	Anti-dumping duty
6302.22	Bed linen of man-made fibres (excluding knitted or crocheted bed linen), printed	Malawi	70.41%
6302.32	Bed linen of man-made fibres (excluding knitted or crocheted bed linen)	Malawi	98.13%

### 2.1.3 Production process

The production process entails the cutting and stitching of woven printed and dyed fabrics and the finishing and packing of the finished product.

### 3. DUMPING

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Article 11.1 of the Anti-Dumping Agreement provides as follows:

"An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury."

Article 11.2 of the Anti-Dumping Agreement provides as follows:

"The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately."

#### 3.1 DUMPING

Section 1(2) of the ITA Act, provides a definition of the term "dumping". The Act provides as follows:

"'dumping' means the introduction of goods into the commerce of the Republic or the common customs area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2), of those goods;"

### 3.2 NORMAL VALUE

Normal values are determined in accordance with section 32(2)(b) of the ITA Act. This section provides as follows:

“normal value’ means

- (i) the comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting countries of origin; or
- (ii) in the absence of a price contemplated in subparagraph (i), either –
  - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
  - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative”

Section 32(4) of the ITA Act further provides as follows:

- (a) “If The Commission, when evaluating an application concerning dumping, concludes that the normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, The Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country.”

### 3.3 EXPORT PRICE

Export prices are determined in accordance with section 32(2)(a) of the ITA Act which provides as follows:

“‘export price’, subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;”.

Section 32(5) of the ITA Act further provides as follows:

“The Commission must, despite the definition of “export price” set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on reasonable basis”.

Section 32(6) of the ITA Act provides as follows:

“Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned-

- (a) there is no export price as contemplated in the definition of dumping;
- (b) there appears to be an association or a compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or
- (c) the export price actually paid or payable is unreliable for any other reason”.

### 3.4 ADJUSTMENTS

Article 2.4 of the Anti-Dumping Agreement provides as follows:

“A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-

factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.”.

Both the Anti-Dumping Agreement and the ITA Act provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for other differences affecting price comparability. The Commission considers that for an adjustment to be allowed, quantifiable and verifiable evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

### **3.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE**

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of the Anti-Dumping Agreement and no anti-dumping duty will be imposed.

### **3.6 METHODOLOGY IN THIS INVESTIGATION FOR MALAWI**

#### **3.6.1 Normal Value**

##### **3.6.1.1 Type of economy**

Malawi is considered by the Commission to be a country with a free market economy and therefore the definition of section 32(2)(b) of the ITA Act applies.

##### **Crown Fashions**

The exporter is a manufacturer and exporter of shirts, blouses, men's trousers, golf shirts, curtains and bed linen in Malawi, operating in an Export Processing Zone (EPZ). As a result, it stated that it does not sell the subject product on the domestic market in Malawi.

##### **Comments by the exporter in its petition:**

The exporter stated that it did not agree with the Board's policy to base the normal value for an exporter, which did not sell the product on its domestic market, on the selling prices of other manufacturers in that country.

The exporter stated that both Section 1 of the Board on Tariffs and Trade Act, 106 of 1986 (BTT Act) and Article 2.2 of the Anti-Dumping Agreement allow for the normal value to be calculated based on either exports to a third country or a constructed normal value based on the cost of production of the exported product in the absence of any domestic sales.



The exporter referred the Board to Article 2.2.1.1 and Article 2.2.2 of the Anti-Dumping Agreement and stated that although these articles refer to costs, they still imply that each exporter under investigation should be evaluated independently.

The exporter stated that this is also the approach followed by other authorities and by the Board. It stated that the Board followed this approach in its recent investigation into the alleged dumping and subsidisation of paper insulated, lead covered electric cable originating in or imported from India.

The exporter stated that the case for individual treatment is further supported by the Board's policy to calculate separate normal values for each company responding to an anti-dumping investigation. It stated that the Board calculated separate dumping margins for each participating producer/exporter based on its own normal value and export price.

The exporter stated that this would be particularly true in cases where only one exporter, although not the only manufacturer in the country under investigation, who did not have domestic sales of the subject product, responded to the Board's investigation. It stated that although some information might be available on other producers' domestic sales, this does not represent the "best information available" for the responding exporter. It stated that the "best information available" remains the production and selling and administrative cost of the responding exporter.

The exporter stated that it manufactures shirts, blouses, men's trousers, golf shirts, bed linen, curtains and other similar products, of which bed linen is the subject of this investigation.

The exporter stated that it exports bed linen to the South African market only on orders received from South African customers. It stated that it does not sell bed linen on the Malawian market as there exists no local demand in Malawi for the bed linen manufactured by it, i.e. in the form of duvet covers, fitted sheets and pillow cases in the different bed sizes.

The exporter stated that the purchase price used by the SACU manufacturer in the original investigation was obtained from a merchant that no longer sells the subject product. It stated that this was a once off sale available from, presumably, some production overflow and not in the same comparable volumes as those dispatched to SACU.

The exporter stated that the only other bed linen manufacturers in Malawi were Lilongwe Textiles Ltd and Bentex Ltd, who ceased their operations in 1999. It stated that no other, better information on domestic sales is known to it.

The exporter stated that since it does not sell bed linen in Malawi or export it to third countries, the normal value should be based on the constructed normal value for the goods if it had been sold on the Malawian market, in accordance with the BTT Act and the Anti-Dumping Agreement.

The exporter stated that it does not believe that the company's overall profit margin can be allocated to bed linen sales as the rest of the products manufactured by it are more sophisticated, being clothing etc. and exported to the USA, where higher margins are achieved. It stated that even if bed linen were to be sold on the Malawian market, the same profit margins would not be achieved as those when exporting to SACU.

These comments were considered by the Board in the merit submission, and the Board requested that, as part of the verification exercise, the investigators verify the selling prices of the subject products in shops in Malawi.

### **Selling prices of the subject products in Malawi**

The following general prices for the subject products were obtained from shops in Blantyre:

Printed duvet covers (Pep Store)	Price/unit (MK)	Conversion factor	Price/kg (MK)	Price/kg (R)
Single	999.50	0.654	1528.29	222.46
Double	1500.00	1.00	1500.00	218.34
Printed duvet covers (Shoprite Checkers)				
Single	1700.00	0.654	2599.39	378.37
Dyed pillow cases (Pep Store)	169.00	0.163	1036.81	150.92

No fitted sheets could be found in the shops visited in Blantyre. The exchange rate of 1 South African Rand= 6.87MK was used to convert the amounts to Rand. The exchange rate used was the average exchange rate during the POI and was obtained from [www.oanda.com](http://www.oanda.com).

However, no documentary evidence existed to substantiate the prices obtained in Malawi.

The Board, therefore, decided for purposes of its preliminary decision, not to take these prices into account. This decision was confirmed by the Commission for purposes of its final determination.

### **Cost build-ups**

The exporter originally indicated that it exported the following products to SACU during the POI:

- printed duvet covers
- printed fitted sheets
- printed pillow cases
- printed night frills
- sets consisting of duvet covers, pillowcases, fitted sheets and night frills of man-made fibres (excluding knitted and crocheted bed linen), classifiable under tariff sub-heading 6302.22.
  
- dyed duvet covers
- dyed fitted sheets
- dyed pillow cases
- dyed night frills
- sets consisting of duvet covers, pillowcases, fitted sheets and night frills of man-made fibres (excluding knitted and crocheted bed linen), classifiable under tariff sub-heading 6302.32.

Based on this information the Board decided to initiate the review investigation on the abovementioned products.

However, during the verification the Board found that only the following products were exported to SACU:

- printed duvet covers
- dyed fitted sheets
- dyed pillow cases

The sets were found to be unfinished comforters exported in bale sets. No night frills or sets consisting of duvet covers, pillowcases, fitted sheets and night frills, as previously indicated by the exporter, were exported to SACU during the POI.

All cost elements involved in the manufacturing of the subject products were verified. The actual costs were verified to purchase invoices of the particular cost item.

Based on the verified information the Commission decided to determine the normal values for the subject products based on cost build-ups in accordance with section 32 (2)(b)(ii)(aa) of the ITA Act.

#### **Selling, general and administration cost (SG&A) and profit**

The actual SG&A expenses on the export market were added to the cost of production. Actual profit margins realised on duvet covers and fitted sheets on the export market were also added to the cost for the two products. The company's average profit margin for bed linen was added to the cost of the pillow cases as this product was exported at a loss to the SACU during the POI.

In response to the Commission's essential facts letter, Deloitte & Touche, on behalf of the exporter, stated that from the Commission's calculations it would seem as though the Commission had used the cost calculation of the exported products and the profit margins obtained on exports for the calculation of the normal values. Deloitte & Touche stated that they believe that the normal value should be calculated based on the cost of the exported product and that a reasonable profit margin, equal to the

company's overall profit margin, be allocated to the costs in order to calculate normal values.

The Commission found that some products were exported at a profit during the POI, and that other products were exported at a loss. Based on this information, the Commission decided to add the actual profit margins realised on the individual products on the export market to the costs in the construction of the normal values. The Commission further decided to add the company's overall profit margin on bed linen to the cost of a product where the product was sold at a loss.

### **3.6.2 Export prices**

#### **Definition of Export price**

Export price is defined in section 32 (2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale.

The Commission found that only the following products were exported to the SACU during the POI:

- (a) Printed duvet covers
- (b) Dyed pillowcases
- (c) Dyed fitted sheets

Actual export sales to SACU were used to determine the export price. The exports took place during the period 1 April 2000 to 31 March 2001.

### **Adjustments to the export prices**

The Commission made the following adjustments to the export prices for purposes of calculating the ex-factory export prices:

#### *Discount*

An adjustment was made to the export price for the discounts allowed by the exporter on the selling price. The actual discount applicable to a product was deducted from the export price.

#### *Insurance*

An adjustment was made to the export price for the insurance paid by the exporter on the selling price of the exported products. The actual insurance amount per kg was calculated and deducted from the export price.

#### *Freight*

An adjustment was made to the delivered selling price for the freight cost from Malawi to SACU. The actual freight cost per kg was calculated and deducted from the export price.

In response to the Commission's essential facts letter, Deloitte & Touche stated that it was not clear where the export prices used in the dumping margin calculation, were obtained.

The Commission found that in calculating the ex-factory selling prices for purposes of the preliminary decision, the average percentage of each of the adjustments to calculate the specific adjustment per kg was used. This resulted in the adjustments per kg being understated. For purposes of the final determination the adjustments were recalculated on a transaction basis and the actual adjustment value per kg then calculated.

### **3.6.3 Margin of Dumping**

The dumping margins were calculated by subtracting the weighted average ex-factory export price of each of the subject products from the corresponding constructed normal values. The dumping margin for each of the three products exported to SACU during the POI was calculated to be as follows:

- dyed fitted sheets      3.3 per cent
- dyed pillow cases      26.0 per cent
- printed duvet cover      -0.61per cent

## **3.7 Comments from interested parties on non-confidential petition**

### **3.7.1 Comments by Texfed**

The Textile Federation, on behalf of its members, objected to the request for the withdrawal of the anti-dumping duty on bed linen from Malawi. It stated that taking into account the history of imports from Malawi under the trade agreement, it is their opinion that, should the anti-dumping duty be scrapped, it would once again create a way of circumventing the anti-dumping duty by rerouting Pakistani and Chinese products to South Africa via Malawi.



Texfed stated that the fact that the major inputs of the exporter in the manufacturing of bed linen are imported from Pakistan, is a sign of the possible rerouting of Pakistani products via Malawi to South Africa.

Texfed further stated that the local producers of bed linen are employing a number of workers that will lose their jobs if dumping should re-occur. The local industry is still producing at extremely low margins mainly due to “illegal” imports of household textiles and fabric into South Africa.

Texfed suggested that the exporter produce bed linen for other markets, and not solely for the South African market.

### **3.7.2 Comments by Berg River Textiles**

Berg River Textiles (Berg River) stated that currently there is an over capacity of wide-width sheeting fabrics in both printed and dyed form with a number of suppliers situated in Southern Africa. Furthermore, there are many large converters of made-up goods who currently supply Southern African retailers. These businesses are significant employers within the industry and have invested in both capital and training to establish supply links to retail.

It stated that any revision or reduction of anti-dumping duties would be devastating to these companies. Berg River stated that it anticipates huge inflows of cheap production and the control of offshore product via a third party conduit would be near impossible.

Berg River stated that it made contact via e-mail with Crown Fashions on 25 April 2003, offering its product, but had received no response.

### **3.7.3 Comments by Frame Textile Group**

Frame Textile Group (Frame) stated that it objects to the relaxation of anti-dumping duties on the grounds that the exporter, or others, will flood the local market with low-cost bed linen to the extent seen prior to the application of the current anti-dumping duties on Malawi.

Frame further stated that the unavailability of the normal value cost comparison could allow the exporter *carte blanche* price manipulation with little chance of dumping being authenticated, other than by using the constructed cost method which is often subjective and which is easily defended by Exporters.

### **3.7.4 Comments by Continental Linen Co.**

Continental Linen registered its strongest possible objection to the application by Crown Fashions. Continental Linen stated that it is of the view that any review of anti-dumping duties from Malawi would most seriously impact on their business and especially its labour force.

Continental Linen stated that it currently employs over two hundred workers and it is well known that its industry is operating at extremely low margins mainly due to “illegal” imports of product and fabric into South Africa.

It stated that production in Malawi with any reduction in the current anti-dumping duties would seriously prejudice the jobs of its current workforce and could put it out of business.

In addition, Continental Linen stated that it is aware of many infringements and irregularities in trade with Malawi prior to the imposition of these anti-dumping duties that caused many South African plants to close down.

The Commission found that although the SACU industry may suffer material injury if the duties on certain bed linen from Crown Fashions are terminated, this investigation was conducted to determine whether the subject product was dumped on the SACU market, and, in accordance with the Anti-Dumping Agreement, anti-dumping duties shall be terminated if they are no longer warranted.

#### **3.7.5 Comments by the Malawi Government (Ministry of Commerce and Industry)**

The Ministry stated that it is in support of the application by Crown Fashions for the removal of the anti-dumping duty on the said product. It stated that Crown Fashions is one of the oldest textiles and clothing companies in Malawi and manufactures various textiles and clothing products including trousers, T-shirts and bed linen. The company operates under the Export Processing Zone (EPZ) scheme. As an EPZ registered company, all its products are destined for export markets. The company's major export market is South Africa.

The Ministry stated that the determination of dumping and subsequent imposition of the anti-dumping duty on bed linen originating in Malawi was based on investigation conducted in 1999. It stated that the investigation covered two companies which were operating under the EPZ scheme, namely Lilongwe Textiles Limited and Lilongwe and Bentex Limited. Crown Fashions was not included in the investigation.

The Ministry stated that at the time of the investigation the Government of South Africa had placed a trade embargo on exports of Malawi textiles and clothing following a dispute on the interpretation of the rules of origin under the Malawi-South Africa Bilateral Trade Agreement. Since the companies' export market was exclusively South Africa, their operations were constrained by the trade embargo such that they closed their operations even before the anti-dumping investigation was concluded.

The Ministry stated that since the companies that were found to be dumping bed linen on the SACU market are no longer operational, there is no case of dumping existing now. Therefore, in line with Article 11 of the Agreement on Implementation of Article VI of GATT 1994, it submitted that the reason for the institution of the anti-dumping duty on Malawian exports of bed linen has been invalidated by the closure of the companies.

The Ministry concluded by stating that on the basis of the foregoing and the detailed information submitted to the Board by Crown Fashions it submits that the anti-dumping duty on Malawian bed linen be removed.

### **3.8 Comments to the Commission's "essential facts" letters**

#### **3.8.1 Comments by Texfed**

In response to the Commission's letter of "essential facts", Texfed, on behalf of its members stated that it strongly objects to the reduced rates of anti-dumping duty on certain bed linen from Malawi.

Texfed again stated that taking into account the history of imports from Malawi under the trade agreement, it is its opinion that, should the anti-dumping duty be scrapped, it would once again create a way of

circumventing the anti-dumping duty by rerouting Pakistani and Chinese products to South Africa via Malawi. It stated that the Exporter has indicated that all the fabric, the major input into bed linen, is imported from Pakistan and that only a small percentage of the inputs are of South African origin. According to Texfed this is proof of the rerouting of Pakistani products via Malawi to South Africa. Texfed stated that the Exporter has indicated that they are only producing for the South African market.

Texfed stated that the local producers of bed linen are employing a number of workers that will lose their jobs if dumping should re-occur. It stated that the local industry is already producing at extremely low margins mainly due to "illegal" imports of household textiles and fabrics into South Africa. It stated that the normal import duty is 30 per cent *ad valorem*. It stated that in terms of the SADC agreement (of which Malawi is a member) the import duty is 14 per cent *ad valorem*. It further stated that in terms of the SADC agreement, Malawi is regarded as an LDC, and therefore is not required to have a two-stage production process. Texfed stated that a total of 565 tons of bed linen can be imported duty-free annually from Malawi under the MMTZ quota arrangement in terms of the SADC agreement and as a result that Crown Fashions would be able to export bed linen to South Africa at only approximately 3 per cent duty.

Texfed stated that it cannot stress enough that products produced in Pakistan and China will find its way to South Africa via Malawi, circumventing payment of anti-dumping duties. Texfed further stated that it anticipates huge inflows of cheap bed linen from Malawi. It stated that as mentioned previously, the local producers abide by the South African tariff and labour legislation and contribute to many levies (e.g. RSC, Skills development, Training, UIF, etc), while the wages in Malawi are lower than

in South Africa and that Malawi has virtually no labour laws. Texfed stated that the proposed reduced anti-dumping duties would seriously prejudice local jobs.

Texfed objected to the proposed reduced anti-dumping duties on certain bed linen produced by Crown Fashions and imported from Malawi.

### **3.8.2 Comments by Deloitte & Touche**

Deloitte & Touche stated that it noticed from the essential facts letter that the Commission excluded night frills from its recommendation. It stated that it assumed that this was based on the fact that no night frills were exported by Crown Fashions over the POI. Deloitte & Touche stated that from the outset, Crown Fashions requested that night frills form part of the review and had included information on the constructed normal value and constructed export price thereof. It stated that it believed, therefore, that night frills should form part of the Commission's recommendations.

However, the Commission found that information submitted by the exporter included exports to SACU for the period August 2000 to February 2001 and that the exporter indicated that these were the last exports to SACU. Based on this information, the Board decided that the POI for dumping should be 1 April 2000 to 31 March 2001. The Commission further found that financial statements submitted by Crown Fashions were also for its financial year ending 31 March 2001. Verified information indicated that only printed duvet covers, dyed fitted sheets and dyed pillow cases were exported to the SACU during the POI.

The Commission found that the exports of night frills took place during 1999 and not during the POI and as a result, night frills could not be included in this investigation.

### **3.9 CONCLUSION- DUMPING**

For purposes of its final determination, the Commission considered all the comments received from interested parties and found that dyed fitted sheets and dyed pillowcases originating in Malawi and imported from Crown Fashions were dumped on the SACU market, but that printed duvet covers originating in Malawi and imported from Crown Fashions, were not dumped on the SACU market.

#### 4. RECOMMENDATION

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The Commission made a final determination that:

- dyed fitted sheets and dyed pillowcases originating in Malawi and imported from Crown Fashions were dumped on the SACU market; and
- printed duvet covers originating in Malawi and imported from Crown Fashions were not dumped on the SACU market.

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the existing anti-dumping duties be amended to read as follows:

Tariff subheading	Description	Originating in or imported from	Anti-dumping duty
6302.22	Bed linen of man-made fibres (excluding knitted or crocheted bed linen), printed, excluding duvet covers imported from Crown Fashions Limited	Malawi	70.41%
6302.32	Bed linen of man-made fibres (excluding knitted or crocheted bed linen), excluding fitted sheets and pillowcases imported from Crown Fashions Limited	Malawi	98.13%
	Fitted sheets of man-made fibres (excluding knitted or crocheted bed linen), imported from Crown Fashions Limited	Malawi	3.3%
	Pillow cases of man-made fibres (excluding knitted or crocheted bed linen), imported from Crown Fashions Limited	Malawi	26.0%



As the Commission found during the verification that only:

- printed duvet covers
- dyed fitted sheets
- dyed pillow cases

were exported to SACU during the POI, and as it found that the exporter could not provide information that dumping of the other subject products was not taking place, the Commission decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on these products be retained.