

**EUROPEAN COMMUNITIES – ANTI-DUMPING DUTIES ON IMPORTS
OF COTTON-TYPE BED LINEN FROM INDIA**

Recourse to Article 21.5 of the DSU by India

Request for Consultations

The following communication, dated 8 March 2002, from the Permanent Mission of India to the Permanent Delegation of the European Commission and to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 12 March 2001 the Dispute Settlement Body (the DSB) adopted¹ the Appellate Body Report² and the Panel Report,³ as modified by the Appellate Body, in the dispute "*European Communities–Anti-Dumping Duties On Imports Of Cotton-Type Bed Linen From India*". (WT/DS141) These Reports concluded that the EC's imposition of definitive anti-dumping duties on imports of Cotton-Type Bed Linen from India was inconsistent with the requirements of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement, or ADA). In accordance with these Reports the DSB recommended that the European Communities bring its measure into conformity with its obligations under the Anti-Dumping Agreement.

On 7 August 2001 the Council of the European Union adopted Regulation 1644/2001 amending the original definitive anti-dumping duties on Bed Linen from India, whilst simultaneously suspending its application.⁴ India strongly disagreed that this re-determination complied with the recommendations of the Panel and Appellate Body.⁵ Council Regulation 1644/2001 also provided for the expiry of the amended measures within six months after entry into force of the amended Regulation, unless a review had been initiated before that date. For this reason the matter had been laid to rest by India in the belief that the illegal measure would finally expire by 14 February 2002.

¹ WT/DS141/9 of 22 March 2001.

² WT/DS141/AB/R of 1 March 2001.

³ WT/DS141/R of 30 October 2000.

⁴ Council Regulation (EC) No 1644/2001 of 7 August 2001 amending Regulation (EC) No 2398/97, imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan and suspending its application with regard to imports originating in India, published in Official Journal of the European Communities of 14 August 2001, L-series, No 219, pages 1-11. The original measure was further amended by Council Regulation (EC) No 160/2002 of 28 January 2002 amending Regulation (EC) No 2398/97 terminating the proceeding with regard to imports originating in Pakistan, published in Official Journal of the European Communities of 30 January 2002, L-series, No 26, pages 1-4.

⁵ See, for example, India's statement in the DSB on 23 August 2001 (WT/DSB/M/108 Paragraph 85). The divergence of views was also put on record in WT/DS141/11.

Unfortunately, on 13 February 2002, the EC initiated a so-called "partial interim review",⁶ thereby further compounding the problem by basing a partial review on a flawed re-determination.

This leaves India no choice but to seek recourse to Article 21.5 of the DSU, since "there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings". In particular, India considers that in implementing the recommendations and rulings of the DSB in this dispute through Council Regulation (EC) No. 1644/2001 of 7 August 2001 and by initiating a partial interim review on 13 February 2002:

- The EC has acted inconsistently with Article 2.2.2(ii) of the ADA by not properly calculating a "weighted average". This has led, once again, to the "finding" of dumping for one producer, whereas in reality that producer did not dump. The published statements in recital (74) of the re-determination not only bear out the EC's disregard for the findings of the Appellate Body, but also super-impose EC's own interpretation in contravention of the findings of the Appellate Body. Consequently, the re-calculations and the published statements are contrary to the findings of the Appellate Body;
- The EC acted contrary to the findings of the Panel with respect to Articles 3.1, 3.4 and 3.5 of the ADA by cumulating Indian imports with those of a country for which no dumping was found. Such cumulation in the re-determination also appears manifestly contrary to Articles 3.3 and 3.2 of the ADA. Moreover, the improper sequencing of the analysis, i.e. first resorting to cumulation for injury purposes and then excluding a particular source on account of non-dumped exports, cannot be considered a proper establishment of the facts nor lead to an unbiased and objective evaluation. The unwarranted cumulation has also distorted the injury determination under Article 3.1 of the ADA. The absence of a proper disclosure as regards the inclusion of non-dumped exports from a certain source is also contrary to India's rights of defense as enshrined in Article 6 of the ADA, in particular Articles 6.4 and 6.9 of the ADA. The inadequate public notice is also contrary to the requirements of Article 12 of the ADA;
- The EC has acted contrary to Articles 3.1 and 3.5 of the ADA by failing to comply with the Panel's ruling as regards non-dumped imports originating from within India. While the EC professes to have acted according to the ruling of the Panel, by excluding from the total volume of imports of India the volume of non-dumped imports, the reality is that only a portion of the total of non-dumped imports from India was excluded;
- The EC has acted contrary to the requirements of Article 3.4 of the ADA. The Panel clearly found that "data was not even collected for all the factors listed in Article 3.4 of the ADA, let alone evaluated by the EC investigating authorities". Data "not even collected" can, in the view of India, not suddenly become more "fully described". If the determination was substantively inconsistent with the relevant legal obligations, the adequacy of the notice is meaningless. A proper implementation of the Panel findings requires not only the recitation of injury factors, which should have been examined in the first place, but an overall positive injury determination in line with the ADA. The absence of such overall reconsideration and analysis also renders the determination contrary to Articles 3.1, 3.4, and 3.5 of the ADA. The re-creation of the facts in the re-determination further calls in question whether facts were ever properly established. Moreover, India considers that the evaluation itself in the re-determination was not unbiased and objective;

⁶ Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of cotton-type bed linen originating in India, published in Official Journal of the European Communities of 13 February 2002, C-series, No 39, pages 17-19.

- The EC has not respected the Panel's verdict that information concerning companies other than the Community industry cannot serve as the basis of findings. India considers that EC's actions in this regard are contrary to the Panel's second finding with respect to Article 3.4 of the ADA;
- The EC has not coherently examined the injury factors at the level of the sample nor has it factually done what it has professed to do. Such actions are contrary to Article 17.6(i) and this has also led to a determination contrary to Articles 3.1 and 3.4 of the ADA;
- The EC has not proven that the Community industry has suffered material injury. This is contrary to Article 3.1 of the ADA. The evaluation of the facts was not unbiased and objective. This is contrary to Article 17.6(i) of the ADA;
- The EC has not demonstrated that the dumped imports caused injury. This is contrary to Article 3.5 of the ADA;
- The EC has failed to explore any constructive remedies, contrary to Article 15 of the ADA. Whilst the Panel clearly found that an active onus rests on the investigating authority and that a decision not to impose an anti-dumping duty is not a "remedy" of any type, the EC continued to remain passive. Instead the EC has initiated a "partial interim review" thereby denying the Indian exporters a chance to resume trade under normal conditions.

For the above reasons India considers that the EC has failed to comply with the recommendations and rulings of the DSB and various provisions of the Anti-Dumping Agreement and Article VI of the GATT 1994. India therefore requests, the European Communities to enter into consultations under Articles 4 and 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), Article 17 of the Anti-Dumping Agreement, and Article XXIII of the GATT 1994 to discuss the above matter. This request is made without prejudice to India's rights under the WTO. In this regard India also recalls for the record that "If on the basis of the results of proceedings under Article 21.5 of the DSU that might be initiated by India no later than 31 March 2002, India decides to initiate proceedings under Article 22 of the DSU, the EC will not assert that India is precluded from obtaining DSB authorization because India's request was made outside the 30 day time-period specified in the first sentence of Article 22.6 of the DSU."⁷

India reserves the right to raise additional factual or legal claims or issues related to the aforementioned measure during the course of consultations and in any other subsequent actions under the DSU.

As Article 21.5 of the DSU envisages expedited procedures, India looks forward to receiving EC's reply to this request at an early date and to fix a mutually acceptable date and venue for consultations.

⁷ WT/DS141/11.