

**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 the Establishment of a Panel*

Revision

The following communication, dated 7 May 2002, from the Permanent Mission of India 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 ("DSB") adopted<sup>1</sup> the Appellate Body Report<sup>2</sup> and the Panel Report<sup>3</sup> 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 had been inconsistent with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement" or "ADA"). Pursuant to the recommendations of these Reports, the DSB requested the European Communities to bring its measure into conformity with its obligations under the Anti-Dumping Agreement.

In accordance with Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") the EC and India mutually agreed on a reasonable period of five months and two days to implement the recommendations and rulings of the DSB.<sup>4</sup>

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, purporting to comply with the DSB's recommendations and rulings, whilst simultaneously suspending its application.<sup>5</sup> India strongly disagreed that this re-determination complied with the rulings of the DSB.<sup>6</sup> The re-determination was amended by Council Regulation (EC) No. 160/2002 of 28 January 2002 terminating the proceeding against Pakistan.<sup>7</sup> On 13 February 2002 the EC initiated a so-called

<sup>1</sup> WT/DS141/9 of 22 March 2001.

<sup>2</sup> WT/DS141/AB/R of 1 March 2001.

<sup>3</sup> WT/DS141/R of 30 October 2000.

<sup>4</sup> WT/DS141/10 of 1 May 2001.

<sup>5</sup> 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.

<sup>6</sup> WT/DS141/11 and WT/DSB/M/108 at paragraph 85.

<sup>7</sup> Council Regulation (EC) No. 160/2002 of 28 January 2002 amending Regulation (EC) No. 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and

"partial interim review" against India<sup>8</sup> and on 14 March 2002 the EC terminated the anti-dumping proceeding with respect to Egypt.<sup>9</sup> On 22 April 2002 the Council of the European Union adopted Regulation (EC) No. 696/2002 confirming the definitive anti-dumping duty imposed on imports of cotton-type bed linen originating in India by Regulation (EC) No. 2398/97, as amended and suspended by Council Regulation (EC) No. 1644/2001.<sup>10</sup>

In the view of India, the re-determination, as amended, as well as the further actions, failed to bring the EC into compliance with the recommendations and rulings of the DSB in the dispute *"European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India"* (WT/DS141) and is inconsistent with the WTO covered agreements. The re-determination is inconsistent with Articles 2, 3, and 15 of the ADA, as was the original measure. The re-determination, as well as the further actions, have also introduced further inconsistencies with the Anti-Dumping Agreement.

On 8 March 2002 India initiated procedures under Article 21.5 of the DSU by requesting the EC to enter into consultations. The request was circulated in document WT/DS141/12 of 14 March 2002. Consultations were held in Geneva on 25 and 26 March 2002. These consultations have allowed a better understanding of the respective positions but have failed to settle the dispute.

Accordingly, "there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB between India and EC within the terms of Article 21.5 of the DSU. Pursuant to Articles 6 and 21.5 of the DSU, Article 17 of the Anti-Dumping Agreement and Article XXIII of GATT 1994, and as envisaged in 13 September 2001 Agreement on the "Agreed Procedures between India and the European Communities under Articles 21 and 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) in the follow-up to the dispute *'European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India'*", India hereby requests the establishment of a Panel.

In particular, India claims and requests the Panel to find that:

- (a) The EC acted inconsistent with Article 2.2.2(ii) of the ADA, by not properly calculating a "weighted average" of amounts for SG&A and profits;
- (b) The EC acted inconsistent with Articles 3.1 and 3.2 of the ADA, by not properly excluding the correct portion of non-dumped imports from the total volume of Indian imports;
- (c) The EC acted inconsistent with Articles 3.1 and 3.3 of the ADA by cumulating Indian imports with those of a country for which no dumping was found.
- (d) The EC acted inconsistent with Article 5.7 of the ADA by not simultaneously considering the evidence of dumping and injury. In fact, by cumulating countries for injury purposes and by subsequently excluding a particular source on account of non-dumping, the EC engaged in sequencing that was entirely improper;

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Pakistan and 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.

<sup>8</sup> 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.

<sup>9</sup> Notice of the expiry of certain anti-dumping measures, published in Official Journal of the European Communities of 14 March 2002, C-series, No. 65, page 12.

<sup>10</sup> Council Regulation (EC) No. 696/2002 of 22 April 2002 confirming the definitive anti-dumping duty imposed on imports of cotton-type bed linen originating in India by Regulation (EC) No. 2398/97, as amended and suspended by Council Regulation (EC) No. 1644/2001, published in Official Journal of the European Communities of 25 April 2002, L-series, No. 109, pages 3-13.

- (e) The EC acted inconsistent with Articles 3.1 and 3.4 of the ADA since a proper implementation of the Panel's findings required not only a mere recitation of injury factors but an overall reconsideration and analysis of the information in light of the requirements of the Anti-Dumping Agreement. To the extent that the EC has relied on non-disclosed confidential information it has acted contrary to Articles 6 and 12 of the ADA;
- (f) The EC acted inconsistent with Article 3.5 of the ADA, by incorrectly establishing a causal relationship between dumped imports and injury;
- (g) The EC acted inconsistent with Article 11.2 of the ADA, by accepting a request for review, and subsequently initiating a review, on grounds that are not foreseen in Article 11.2. Thus the EC is also in violation of Article 18.1 of the ADA; and
- (h) The EC acted inconsistent with Article 15 of the ADA by failing to explore constructive remedies. The recently initiated partial interim review shows that the suspension of the measures was not a remedy of any type but a pretext to continue the proceeding and circumvent the Panel's finding with respect to Article 15; and
- (i) The EC also failed to respect the stipulations of Article 21.2 of the DSU.

Accordingly, India requests the Panel to conclude that:

- (a) By failing to withdraw the measures found to be inconsistent with the Anti-Dumping Agreement and to bring its measures into conformity with its obligations under the Anti-Dumping Agreement, the EC has failed to comply with the DSB recommendations and rulings in this dispute; and
- (b) The re-determination, as amended, and the subsequent actions as identified above are inconsistent with the above provisions of the Anti-Dumping Agreement and the DSU.

India requests that the Panel be established with standard terms of reference set out in Article 7 of the DSU. Pursuant to Article 21.5 of the DSU India also requests that, if possible, the DSB refer the matter to the original Panel.

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