

**INDIA – ANTI-DUMPING MEASURE ON BATTERIES
FROM BANGLADESH**

Request for Consultations by Bangladesh

The following communication, dated 28 January 2004, from the delegation of Bangladesh to the delegation of India and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with India pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"), and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "ADP Agreement") with respect to the imposition of definitive anti-dumping duties on imports of lead acid batteries from Bangladesh¹ and certain aspects of the investigation leading to the imposition.

Article 1 of the ADP Agreement provides that an anti-dumping measure "shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of [the ADP] Agreement". In light of Article 1 of the ADP Agreement, Article VI of the GATT 1994 and the other provisions hereafter cited, Bangladesh is particularly concerned about the following aspects of the investigation leading to the imposition of the definitive anti-dumping duties:

1. India's initiation of the investigation, notwithstanding the unsubstantiated claim of the applicants that the application was "by or on behalf of the domestic industry" (Article 5.4 of the ADP Agreement);
2. India's failure to immediately terminate the investigation, notwithstanding its earlier determination that the volume of imports from Bangladesh was negligible² (Article 5.8 of the ADP Agreement);

¹ Imposed under Notification No. 1/2002 – Customs, issued by the Department of Revenue, Ministry of Finance of India dated 2 January 2002.

² Preliminary Findings issued by the Directorate General of Anti-dumping & Allied Duties of the Department of Commerce, Ministry of Commerce and Industry of India dated 21 March 2001. This determination was reiterated by the Department of Revenue, Ministry of Finance of India in Notification No. 41/2001-Customs, dated 9 April 2001 and Notification No. 1/2002 – Customs, dated 2 January 2002.

3. India's failure to determine normal value (Articles VI:1 and VI:2 of the GATT 1994, and Articles 2.1 and 2.2 of the ADP Agreement);
4. India's apparent resort to constructed value as the basis for determining normal value³ (Articles VI:1 and VI:2 of the GATT 1994, and Articles 2.1 and 2.2 of the ADP Agreement);
5. India's failure to determine export price and to make a fair comparison between normal value and export price (Articles VI:1 and VI:2 of the GATT 1994, and Articles 2.1 and 2.4 of the ADP Agreement);
6. India's failure to make an objective examination based on positive evidence of the volume of imports and the effect of imports on prices in the domestic market for like products (Articles 3.1 and 3.2 of the ADP Agreement);
7. India's failure to make an objective examination based on positive evidence of the impact of imports on domestic producers of like products (Articles 3.1, 3.4, 3.5 and 3.7 of the ADP Agreement);
8. India's inclusion of imports from Bangladesh in the cumulative assessment of the effects of imports (including those from China, Japan, and Korea) notwithstanding its earlier determination that the volume of imports from Bangladesh was negligible (Articles 3.3, 3.4, 3.5 and 3.7 of the ADP Agreement);
9. India's failure to evaluate all relevant economic factors and indices having a bearing on the state of the industry (Article 3.1, 3.4 and 3.7 of the ADP Agreement);
10. India's failure to make an objective examination of any known factors other than the imports which may have been injuring the domestic industry (Articles 3.1 and 3.5 of the ADP Agreement);
11. India's failure to make an objective examination of the causal link between the imports and the alleged injury to the domestic industry (Article VI:6(a) of the GATT 1994, and Articles 3.1 and 3.5 of the ADP Agreement);
12. India's failure to take into account information submitted by interested parties from Bangladesh (para. 3, Annex II and Article 6.8 of the ADP Agreement);
13. India's treatment of certain information submitted by the applicants as confidential, notwithstanding its failure to require the applicants to show good cause (Article 6.5 of the ADP Agreement);
14. India's failure to require the applicants to furnish appropriate non-confidential summaries of information submitted as confidential (Article 6.5 of the ADP Agreement);

³ As subsequently manifested in India's semi-annual report to the WTO Committee on Anti-Dumping Practices in document G/ADP/N/85/IND dated 5 April 2002.

15. India's failure to disclose to the interested parties during the anti-dumping investigation the information on dumping, injury and causal link. (Articles 6.2 and 6.4 of the ADP Agreement);
16. India's failure to disclose the "essential facts under consideration which form the basis for the decision to apply definitive measures" (Article 6.9 of the ADP Agreement);
17. India's failure to provide the parties and give public notice of "all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures", in particular, "a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2 [of the ADP Agreement]"; "considerations relevant to the injury determination as set out in Article 3 [of the ADP Agreement]"; and "the main reasons leading to the determination" (Article 12.2, in particular, Articles 12.2.1 and 12.2.2 of the ADP Agreement).

It appears to Bangladesh that the foregoing cannot be reconciled with Article VI of the GATT 1994, Article 1 of the ADP Agreement, and the respective specific provisions cited above. Furthermore, as a result of the imposition of anti-dumping duties in a manner not justified under Article VI of the GATT 1994 and the ADP Agreement, India may likewise be acting inconsistently with its obligations under Articles I:1 and II:1 of the GATT 1994. Bangladesh considers that the benefits accruing to it directly or indirectly under the WTO Agreement are being nullified or impaired pursuant to Article XXIII:1(a) and Article XXIII:1(b), respectively, of the GATT 1994.

Bangladesh looks forward to receiving your reply to this request at your earliest convenience. I propose that the date and venue of these consultations be agreed between our two Missions.
