

**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

The following communication, dated 4 April 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") adopted¹ the Appellate Body Report² and the Panel Report³ 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"). 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.

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.⁴

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.⁵ India strongly disagreed that this re-determination complied with the findings of the Panel and Appellate Body.⁶ The re-determination was amended by Council Regulation (EC) No 160/2002 of 28 January 2002 terminating the proceeding against Pakistan.⁷ On 13 February 2002 the EC initiated

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 WT/DS141/10 of 1 May 2001.

⁵ 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.

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

⁷ 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

a so-called "partial interim review" against India⁸ and on 14 March 2002 the EC terminated the anti-dumping proceeding with respect to Egypt.⁹

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 Covered Agreements. The re-determination is equally inconsistent with Articles 2, 3, and 15 of the ADA, as was the original measure, and has introduced further inconsistencies with the Anti-Dumping Agreement and Article I of the General Agreement on Tariffs and Trade 1994 ("GATT 1994").

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 2001. On 25 and 26 March 2002 these consultations were held in Geneva. 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 contrary to Article 2 of the ADA, notably Article 2.2.2(ii), by not properly calculating a "weighted average" of actual amounts for SG&A and profits;
- (b) The EC acted contrary to Article 3 of the ADA, notably but not limited to Articles 3.1 and 3.2, by not excluding the correct portion of non-dumped imports from the total volume of Indian imports;
- (c) The EC acted contrary to Article 3 of the ADA, notably but not limited to Article 3.3, by cumulating Indian imports with those of a country for which no dumping was found;
- (d) The EC acted contrary to Article 5.7 of the ADA, by not simultaneously considering the evidence of both 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;
- (e) The EC acted contrary to Article 3 of the ADA, notably Article 3.4. Information was not collected nor objectively evaluated for all relevant factors. Moreover, a proper implementation of the Panel's findings required not only a mere recitation of injury factors but

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.

⁸ 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.

⁹ 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.

an overall reconsideration and analysis of the information in light of the requirements of the Anti-Dumping Agreement;

- (f) The EC acted contrary to Article 3 of the ADA, notably Article 3.4. Notwithstanding the finding of the Panel, the EC continued to rely on companies outside the Community industry for its determination of injury;
- (g) The EC acted contrary to Article 3 of the ADA, notably Articles 3.1 and 3.4. By not coherently establishing and evaluating the injury factors at the level of the sample, nor at the level of the Community industry, the EC has not acted properly and objectively;
- (h) The EC acted contrary to Article 3 of the ADA, notably Article 3.5, by not demonstrating that the dumped imports caused injury;
- (i) The EC has acted contrary to Article 3 of the ADA, notably Article 3.1. In view of the above described inconsistencies the EC has not based its determination on positive evidence nor engaged in an objective examination;
- (j) The EC has acted contrary to Article 9 of the ADA, notably Article 9.2, by discriminating between sources found to be dumped. The discriminatory treatment is also contrary to Article I of GATT 1994. Moreover, by inviting and allowing the original complainant to interfere with the investigative process, the objectivity of the analysis has become unduly influenced which runs contrary to the duty of the investigative authorities to conduct an objective analysis; and
- (k) The EC acted contrary to 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.

Subject to the condition that the Panel would consider that the above claims do not constitute inconsistencies with the Agreement on Implementation of Article VI of GATT 1994 and Article I of GATT 1994 the Government of India wishes to identify the following two conditional claims:

- (a) The EC acted contrary to Articles 6 and 12 of the ADA, notably Articles 6.4, 6.9, and 12.2. By not informing the Indian government nor the Indian exporters on which basis decisions have been taken, India's rights of defense and India's right to be duly informed have been breached; and
- (b) By not explaining how it has explored constructive remedies under Article 15 of the ADA the EC acted contrary to Article 12 of the ADA.

Accordingly, India requests the Panel to conclude that:

- (a) The re-determination, as amended, and the subsequent actions as identified above, are inconsistent with the above provisions of the Anti-Dumping Agreement and GATT 1994; and
- (b) 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 and GATT 1994, the EC has failed to comply with the DSB recommendations and rulings in this dispute.

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.
