

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

Report of the Panel
WT/DS141/R

*Adopted by the Dispute Settlement Body
on 12 March 2001*

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I. INTRODUCTION

1.1 On 3 August 1998, India requested consultations with the European Communities pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article 17 of the Agreement on Implementation of Article VI of GATT 1994 ("AD Agreement") regarding Commission Regulation No. 2398/97 of 28 November 1997, imposing final anti-dumping duties on imports of cotton-type bed linen from India.¹ On 17 August 1998, Pakistan requested to be joined in the consultations requested by India.² India and the European Communities held consultations in

¹ WT/DS141/1.
² WT/DS141/2.

Geneva on 18 September 1998 and 15 April 1999, but failed to reach a mutually satisfactory resolution of the matter.

1.2 On 7 September 1999, pursuant to Article XXIII:2 of GATT 1994, Article 6 of the DSU and Article 17 of the AD Agreement, India requested the establishment of a panel to examine the matter.³

1.3 At its meeting on 27 October 1999, the Dispute Settlement Body ("DSB") established a Panel in accordance with India's request.⁴ At that meeting, the parties to the dispute also agreed that the Panel should have standard terms of reference. The terms of reference are, therefore, the following:

"To examine, in the light of the relevant provisions of the covered agreements cited by India in document WT/DS141/3, the matter referred to the DSB by India in document WT/DS141/3, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements".

1.4 On 12 January 2000, India requested the Director-General to determine the composition of the Panel, pursuant to paragraph 7 of Article 8 of the DSU. This paragraph provides:

"If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request."

1.5 The Director-General composed the Panel as follows:

Chairman: Dr. Dariusz Rosati
 Members: Ms Marta Lemme
 Mr. Paul O'Connor

1.6 Egypt, Japan and the United States reserved their rights to participate in the panel proceedings as third parties.

1.7 The Panel met with the parties on 10-11 May 2000 and on 6 June 2000. It met with the third parties on 11 May 2000.

II. FACTUAL ASPECTS

2.1 This dispute concerns the imposition of definitive anti-dumping duties by the European Communities on cotton-type bed linen from India.

2.2 On 30 July 1996, the Committee of the Cotton and Allied Textile Industries of the European Communities ("Eurocoton") – the EC federation of national producers' associa-

³ WT/DS141/3.

⁴ WT/DS141/4.

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tions of cotton textile products – filed an application with the European Communities for the imposition of anti-dumping duties on cotton-type bed linen from, *inter alia*, India.⁵

2.3 On 13 September 1996, the European Communities published notice of the initiation of an anti-dumping investigation regarding imports of cotton-type bed linen originating in, *inter alia*, India.⁶

2.4 The European Communities established 1 July 1995 to 30 June 1996 as the investigation period, and the investigation of dumping covered this period. The examination of injury covered the period from 1992 up to the end of the investigation period.

2.5 In view of the large number of Indian producers and exporters, the European Communities conducted its analysis of dumping based on a sample of Indian exporters. The European Communities also established a reserve sample, to be used in the event companies in the main sample subsequently refused to cooperate.

2.6 The European Communities established normal value based on constructed value for all investigated Indian producers. One company, Bombay Dyeing, was found to have representative domestic sales of cotton-type bed linen taken as a whole. Five types comparable to those exported to the European Communities were sold in representative quantities on the domestic market. Those five types were found not to be sold in the ordinary course of trade. Therefore, constructed values were calculated for all the types sold by Bombay Dyeing. For the other investigated Indian producers, the information for SG&A and profit used in the constructed normal value was that of Bombay Dyeing. Export price was established by reference to the prices actually paid or payable in the EC market. The weighted average constructed normal value by type was compared with weighted average export price by type for the investigated Indian producers, and a dumping margin was calculated for each such producer.

2.7 The complaint listed companies that produced bed linen in the European Communities. The European Communities excluded certain complainant companies. The 35 remaining companies were found to represent a major proportion of total Community production of bed linen in the investigation period and were, therefore, deemed to make up the Community industry.

2.8 Due to the number of companies in the Community industry, the European Communities established a sample. This sample comprised 17 of the 35 companies in the Community industry, representing 20.7% of total Community production and 61.6% of the production of the Community industry. The European Communities found that the Community industry suffered declining and inadequate profitability and price depression and, accordingly, reached the conclusion that the Community industry had suffered material injury. The European Communities found a direct causal link between the increased volume and the price effects of the dumped imports and the material injury suffered by the Community industry, demonstrated, according to the European Communities, by the existence of heavy undercutting resulting in a significant increase in the market share of the dumped imports and corresponding negative consequences on volumes and prices of sales of Community producers.

2.9 The European Communities published notice of its preliminary affirmative determination of dumping, injury and causal link on 12 June 1997.⁷ Provisional anti-dumping duties were imposed with effect from 14 June 1997.

⁵ Exhibit India-6. The other countries whose exporters of cotton-type bed linen were subject to the application for investigation and imposition of anti-dumping duties were Egypt and Pakistan.

⁶ Exhibit India-7.

⁷ Commission Regulation No. 1069/97, Exhibit India-8 ("Provisional Regulation").

2.10 The European Communities continued its investigation, received comments from interested parties, and provided an opportunity to be heard. Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties, and the definitive collection, at the level of these duties, of amounts secured by provisional duties, on 3 October 1997.⁸ An opportunity for further representations was subsequently provided.

2.11 Notice of the final affirmative determination was published on 28 November 1997. Injury margins were determined to be above the level of dumping margins in all cases, and therefore definitive anti-dumping duties in the amount of the dumping margins determined, ranging from 2.6% to 24.7%, depending on the exporter in question, were imposed on imports of cotton-type bed linen originating in India.⁹ Certain handloom products were exempted from the application of the definitive duties, provided a certificate of handloom origin in the required form was provided. Provisional duties were not definitively collected.

III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

A. *India*

3.1 India requests that the Panel find that, by imposing final anti-dumping duties on imports of cotton-type bed-linen from India, the European Communities violated Articles 2.2, 2.2.2, 2.4.2, 3.1, 3.4, 3.5, 6, 6.10, 6.11, 5.3, 5.4, 15, and 12.2.1 and 12.2.2. India makes 31 separate claims with respect to these asserted violations, as follows:

- Claim 1: Inconsistency with Article 2.2.2, by resorting to the option laid down in Article 2.2.2(ii) and by misapplying that option;
- Claim 4: Inconsistency with Article 2.2, by applying the profit amount determined for Bombay Dyeing in calculating constructed value for other producers, even though that amount was clearly not "reasonable";
- Claim 7: Inconsistency with Article 2.4.2, by zeroing negative dumping amounts in calculating dumping margins;
- Claim 8: Inconsistency with Article 3.1, by assuming that all imports of the product concerned during the investigation period were dumped;
- Claim 11: Inconsistency with Article 3.4, by failing to consider all injury factors mentioned in that provision for the determination of the state of the domestic industry;
- Claim 14: Inconsistency with Article 6, insofar as the European Communities would argue that it did in fact consider all factors in Article 3.4, by failing to disclose or make public findings thereon, which violates the rights of defence contained in Article 6.
- Claim 15: Inconsistency with Article 3.4, by relying in the injury determination on companies outside the domestic industry, by not consistently basing the injury determination on the chosen sample and by relying on different "levels" of industry for different injury indices;
- Claim 16: Inconsistency with Articles 6.10 and 6.11, by selecting a sample of the domestic industry that was not representative;

⁸ Exhibit India-33.

⁹ Council Regulation No. 2398/97, Exhibit India-9 ("Definitive Regulation").

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- Claim 19: Inconsistency with Article 3.4, by taking account of injury allegedly caused by imports before the investigation period, which imports were not determined to be dumped;
- Claim 20: Inconsistency with Article 3.5, by taking account of injury allegedly caused by imports before the investigation period, which imports were not determined to be dumped;
- Claim 23: Inconsistency with Article 5.3, by failing to examine the allegations in the complaint and by failing to take into account information available at the time of initiation pointing to lack of material injury caused by dumped imports;
- Claim 26: Inconsistency with Article 5.4, by failing to properly examine the representativeness of the complainant and/or by failing to make a proper determination on representativeness as required by that provision;
- Claim 29: Inconsistency with Article 15, by failing to explore possibilities of constructive remedies before imposing anti-dumping duties;

3.2 India's claims 2, 5, 9, 12, 17, 21, 24, 27, and 30 assert inconsistency with Article 12.2.1 by failing properly to explain, in the Provisional Regulation, the European Communities' reasoning regarding matters raised in claims 1, 4, 8, 11, 16, 20, 23, 26, and 29, respectively.

3.3 India's claims 3, 6, 10, 13, 18, 22, 25, 28, and 31 assert inconsistency with Article 12.2.2 by failing properly to explain, in the Definitive Regulation, the European Communities' reasoning regarding matters raised in claims 1, 4, 8, 11, 16, 20, 23, 26, and 29, respectively.

3.4 India argues that, in so doing, the European Communities has nullified and impaired benefits accruing to India under the WTO Agreement.

3.5 India further requests that the Panel recommend that the European Communities bring its measures into conformity with its WTO obligations and that the European Communities immediately repeal the Regulation imposing definitive anti-dumping duties and refund anti-dumping duties paid thus far.

3.6 India also requests that the Panel issue the following preliminary ruling:

1. With respect to certain documentary evidence provided by the European Communities in Exhibit EC-4, India notes that this document was never made available to it, or otherwise referred to, at any stage prior to this point in time. India indicates that standing has been a central issue throughout the anti-dumping investigation leading to the imposition of anti-dumping duties on cotton-type bed linen from India, despite which the European Communities has never before produced Exhibit EC-4. India, therefore, requests that the exact status of Exhibit EC-4 be established.

B. European Communities

3.7 The European Communities requests the Panel to reject the requests for recommendations made by India.

3.8 In its first submission, the European Communities requests that the Panel issue the following preliminary rulings:

1. The European Communities objects to the inclusion in India's first written submission of claims that were not mentioned in its Panel request. These include claims that the European Communities has acted inconsistently with the following provisions of the AD Agreement: Article 1; Article 3.4, as regards the allegation that the European Communities assumed that im-

- ports before the period of investigation were dumped (claim 19); Article 3.6 (claim 8); Articles 6.2, 6.4 and 6.9 (claim 14); and Articles 6.10 and 6.11 (claim 16).
2. The European Communities submits that India's claims concerning alleged defects in the Provisional Regulation are beyond the Panel's jurisdiction because (i) Article 17.4 defines the circumstances in which a provisional measure may be referred to the DSB and India has not contended that the Provisional Regulation fulfils the requirements of that provision and (ii) India's claims regarding the Provisional Regulation are moot as the Regulation expired in November 1997 and no anti-dumping duties were collected under it. The European Communities requests that the Panel exclude these claims from the scope of these proceedings (claims 2, 5, 8 (in part), 9, 11 (in part), 12, 15 (in part), 17, 19 (in part), 21, 24, 27, 29 (in part) and 30).
 3. The European Communities requests the Panel to rule that the verbatim reports of the consultations submitted as evidence by India are inadmissible and will be disregarded.
 4. The European Communities requests the Panel to rule that the document submitted by India as Exhibit India-49 is not part of these proceedings, because it is apparently a dumping calculation made by the EC authorities in the course of another investigation. The European Communities condemns the breach of confidentiality and indicates that it is not prepared to comment on the substance of the document.
- 3.9 In addition to its request for a preliminary ruling regarding the Panel's terms of reference, the European Communities also argued that claim 29 is largely outside the Panel's terms of reference because the Panel request referred to EC behaviour before the Provisional Regulation.

IV. ARGUMENTS OF THE PARTIES

4.1 With the agreement of the parties, the Panel has decided that, in lieu of the traditional descriptive part of the Panel report setting forth the arguments of the parties, the parties' submissions will be annexed in full to the Panel report. Accordingly, the parties' first and second written submissions and oral statements, along with their written responses to questions, are attached at **Annex 1** (India) and **Annex 2** (the European Communities). The written submissions, oral statements and responses to questions of the third parties are attached at **Annex 3**.

V. INTERIM REVIEW

5.1 On 31 July 2000, the Panel provided its interim report to the parties. The parties submitted their comments on the interim report on 7 August 2000. Neither party requested that the Panel hold an interim review meeting, and as a consequence no meeting was held.

5.2 Having reviewed the parties' comments, the Panel corrected a typographical error in the heading of section VI.C.1, and made a stylistic change to use the designation "European Communities". In addition, we made the following clarifying changes: (i) to the heading of section VI.C.1, to more accurately reflect the legal basis of the claim in question; (ii) to the third sentence of paragraph 6.215, to reflect the nature of inconsistencies in certain photocopied documents submitted to the Panel; and (iii) to footnote 90, to

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reflect the basis of the European Communities' decision not to apply a lesser duty. We did not make a requested change to the last sentence of paragraph 6.215, as the timing of the EC's offer to inspect documents is already set out in paragraph 6.207, and need not be repeated.

VI. FINDINGS

A. *Requests for Preliminary Rulings*

6.1 In its first written submission, the European Communities requested preliminary rulings with respect to (i) the scope of the claims before us, (ii) certain evidence concerning the consultations presented by India in its first submission, and (iii) certain evidence from a different anti-dumping investigation presented by India in its first submission. India subsequently made a preliminary request with respect to certain evidence presented by the European Communities in its first submission. The parties provided written responses to each others' requests for preliminary rulings prior to our first meeting, and further arguments were made at that meeting. At the close of the first meeting, we ruled orally on the European Communities' request to dismiss India's claims under Article 6 of the AD Agreement, and transmitted a written version of our oral ruling to the parties. We also ruled on the status of an unsolicited *amicus curiae* submission,¹⁰ and set forth our position regarding certain of the requests for preliminary rulings on which we did not rule. The discussion below sets forth our rulings, with additional clarification, on requests for preliminary rulings disposed of at the first meeting, and disposes of the remaining requests for preliminary rulings in this dispute.

1. *EC Request*

(a) Scope of the Claims before the Panel

(i) Parties' Arguments

6.2 With regard to the scope of the claims before the Panel, the EC requests, on two bases, a ruling that certain of India's claims are not properly before the Panel.

6.3 First, the European Communities argues that certain of the claims pursued by India in its first written submission were not mentioned in the request for establishment, either because there is no reference to the provision of the AD Agreement allegedly violated or the measure to which the claim is addressed is not before the Panel, or because the basis for the claim is different in the request from that presented in the first submission, and thus is not clearly identified in the request. The European Communities asserts that the following were not mentioned in the Panel request and are therefore not within the scope of the Panel's terms of reference:

claims that the European Communities acted inconsistently with the following provisions of the Anti-dumping Agreement:
 Article 1 (Para. 7.3 of India's first submission);

¹⁰ On Tuesday, 9 May 2000, the day before our first meeting with the parties, the Panel received an unsolicited *amicus curiae* brief in support of the complaint by India in this dispute, submitted on behalf of the Foreign Trade Association by Dr. Konrad Neundörfer. We made copies available to the parties for comment. No party made any substantive comments regarding that submission. We did not find it necessary to take the submission into account in reaching our decision in this dispute.