

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

Recourse to Article 21.5 of the DSU by India

Report of the Panel

WT/DS141/RW

Adopted by the Dispute Settlement Body

on 24 April 2003

as Modified by the Appellate Body Report

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INTRODUCTION

.1 On 8 March 2002 India requested consultations with the European Communities pursuant to Articles 4 and 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter "DSU"), Article XXIII of the General Agreement on Tariffs and Trade, and Article 17 of the Agreement on Implementation of Article VI of the GATT 1994 (hereinafter "AD Agreement") concerning, *inter alia*, the European Communities alleged non-compliance with the DSB rulings and recommendations in the dispute "*European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*" and various provisions of the AD Agreement and Article VI of GATT 1994.¹ The European Communities and India consulted on 25 and 26 March 2002, but failed to settle the dispute.

.2 On 7 May 2002, India requested the Dispute Settlement Body (hereinafter "DSB") to establish a panel pursuant to Articles 6 and 21.5 of the DSU, Article 17 of the AD Agreement and Article XXIII of GATT 1994, and as envisaged in a 13 September 2001 agreement on the "Agreed Procedures between India and the European Communities under Articles 21 and 22 of the DSU in the follow-up to the dispute '*European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*.'"²

.3 At its meeting on 22 May 2002, the DSB referred this dispute to the original panel in accordance with Article 21.5 of the DSU to examine the matter referred to the DSB by India in document WT/DS141/13/Rev.1. 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/DS141/13/Rev.1, the matter referred by India to the DSB in that document, and to make such findings as will assist the DSB in making the

¹ WT/DS141/12.

² WT/DS141/13/Rev.1.

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recommendations or in giving the rulings provided for in those agreements".

.4 Article 21.5 of the DSU provides that a dispute under that provision shall be decided through recourse to the DSU, including, "wherever possible, resort to the original panel". In this case, one original panellist was unavailable to serve. On 25 June 2002, the parties agreed on a replacement panellist, and as a result the Panel was composed as follows:³

Chairman: Mr. Dariusz ROSATI
 Members : Mr. Paul O' CONNOR
 Mr. Virachai PLASAI

.5 Japan, Korea and the United States reserved their rights to participate in the Panel's proceedings as third parties.

.6 The Panel met with the parties on 10-11 September 2002. It met with the third parties on 11 September 2002.

FACTUAL ASPECTS

.1 This dispute concerns the parties' disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the DSB recommendation in the dispute "*European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*".

.2 On 12 March 2001, the DSB adopted the Report of the Appellate Body⁴ and the Report of the Panel,⁵ 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). Pursuant to the recommendations of the Panel and Appellate Body, the DSB requested the European Communities to bring its measure into conformity with its obligations under the AD Agreement.⁶

.3 On 26 April 2001, pursuant to Article 21.3(b) of the 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.⁷ This period expired on 14 August 2001.

.4 Following adoption of the Panel and Appellate Body Reports, the EC undertook to reassess its findings in light of the Panel and Appellate Body decisions. On 3 July 2001, the EC held a hearing in the proceedings in this respect.

³ WT/DS141/14.

⁴ Appellate Body Report, *European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India* ("EC-Bed Linen") WT/DS141/AB/R, adopted 12 March 2001, DSR 2001:V, 2049.

⁵ Panel Report, *European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India* ("EC-Bed Linen")(hereinafter "original Panel Report, EC-Bed Linen") WT/DS141/AB/R, adopted 12 March 2001, DSR 2001:VI, 2077.

⁶ WT/DS141/9.

⁷ WT/DS141/10.

.5 On 26 July 2001, the Council adopted Regulation 1515/2001 on the measures that may be taken by the EC following a report adopted by the Dispute Settlement Body concerning anti-dumping and anti-subsidy matters.⁸

.6 On 7 August 2001, the Council of the European Union adopted Regulation 1644/2001 (hereinafter "redetermination" or "Regulation 1644/2001"), published 14 August 2001.⁹ Regulation 1644/2001 amended the original definitive anti-dumping measure on bed linen from India. The redetermination established different, lower, dumping margins for imports from India. It did not address the dumping margins for the other countries originally investigated, Egypt and Pakistan. It further concluded that dumped imports from India, Egypt and Pakistan caused material injury to the EC industry. While concluding that the imports from India, Egypt and Pakistan were still injuriously dumped, the Council suspended the application of anti-dumping duties on imports of bed linen from India. The Regulation provided that if no review were initiated within 6 months, the anti-dumping duties would expire, but if a review were initiated, the application of the duties would continue to be suspended.¹⁰

.7 On 19 December 2001, Eurocoton, the trade association acting on behalf of the EC industry, filed a request with the EC authorities for a review.¹¹ On 13 February 2002 the EC initiated a "partial interim review" of the dumping aspect of the measure respecting imports from India based on Eurocoton's request.¹² Pursuant to Regulation 1644/2001, the anti-dumping duties on imports from India remained suspended, and no anti-dumping duties have been collected pursuant to measure.

.8 On 28 January 2002, the Council of the European Union adopted Regulation 160/2002.¹³ This regulation amended the anti-dumping measures on imports of bed linen by terminating the proceeding against Pakistan. The regulation also provided that, unless a review were requested with respect to the anti-dumping measure against imports from Egypt, that measure would expire as of 28 February 2002. No review was requested with respect to imports from

⁸ Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy measures, published in Official Journal of the European Communities of 26 July 2001, L-series, No 201, (hereinafter "Regulation 1515/2001"), Exhibit-India-RW-16.

⁹ 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, Exhibit- Indis-RW-18.

¹⁰ Regulation 1644/2001.

¹¹ Exhibit-India-RW-21.

¹² 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. Exhibit-India-RW-23.

¹³ 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 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, (hereinafter "Regulation 160/2002"). Exhibit-India-RW-22.

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Egypt, and on 28 February 2002 the anti-dumping measure against imports from Egypt expired.¹⁴

.9 On 19 April 2002, the EC held a hearing in connection with the on-going review proceeding.

.10 On 22 April 2002 the Council of the European Union adopted Regulation 696/2002.¹⁵ The Regulation states that, in light of the termination of the proceeding on imports from Pakistan and the expiry of the measure on imports from Egypt, the EC authorities considered it appropriate to reassess the findings, limited to the determination of injury and causal link to the extent that this determination had been based on the examination of the impact of imports from India, Egypt, and Pakistan on a cumulative basis. This reassessment resulted in a conclusion that there was a causal link between dumped imports from India and material injury to the EC industry, and a resulting conclusion confirming the definitive anti-dumping duty imposed on imports of cotton-type bed linen originating in India. Pursuant to Regulation 1644/2001, the anti-dumping duties on imports from India remained suspended.

.11 On 8 March 2002 India had requested consultations under Article 21.5 of the DSU. In that request, India challenged the determination of the EC in Council Regulation 1644/2001, the redetermination, and the initiation of the partial interim review.¹⁶ Although consultations were held, they failed to settle the dispute. India submitted a request for establishment of a panel under Article 21.5 of the DSU on 4 April 2002, challenging the redetermination, as well as the further actions taken by the EC.¹⁷ A revised request for establishment of a panel, mentioning specifically the redetermination and the two subsequent regulations, was subsequently submitted by India on 7 May 2002,¹⁸ and this Panel was established pursuant to that request on 22 May 2002.

PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

A. India

- .1 India requests that the Panel make the following findings:
 - (a) By failing to withdraw the measures found to be inconsistent with the AD Agreement and to bring its measures into conformity with its obligations under the AD Agreement within the mutually

¹⁴ 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. Exhibit-India-RW-24.

¹⁵ 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, (hereinafter "Regulation 696/2002"). Exhibit-India-RW-30.

¹⁶ WT/DS141/12.

¹⁷ WT/DS141/13.

¹⁸ WT/DS141/13/Rev.1.

agreed reasonable period of time, the EC failed to comply with the DSB recommendations and rulings in this dispute; and

(b) The redetermination, as amended, and the subsequent actions, as identified above, are inconsistent with the following provisions of the AD Agreement and the DSU:

- Article 2.2.2(ii) of the AD Agreement by not properly calculating a "weighted average" of amounts for SG&A and profits;
- Articles 3.1 and 3.3 of the AD Agreement by cumulating Indian imports with those from a country for which no dumping was found;
- Article 5.7 of the AD Agreement by not simultaneously considering the evidence of dumping and injury;
- Articles 3.1 and 3.2 of the AD Agreement by not properly excluding the portion of non-dumped imports from the total volume of Indian imports;
- Articles 3.1 and 3.4 of the AD Agreement by reciting factors without even collecting them and by failing to enter into an overall reconsideration and analysis of the information in light of the requirements of the AD Agreement;
- Article 3.5 of the AD Agreement by incorrectly establishing a causal relationship between dumped imports and injury and by disregarding the non-attribution language;
- Article 15 of the AD Agreement by not exploring any remedy, constructive or otherwise; and
- Article 21.2 of the DSU by failing to pay particular attention to this matter affecting India; and which already had formed the subject of dispute settlement.

B. The European Communities

.2 The European Communities requests that the Panel make the following preliminary rulings in accordance with paragraph 13 of its Working Procedures:

- (a) Regulations 160/2002 and 696/2002 are not measures "taken to comply" with the DSB's rulings and recommendations within the meaning of Article 21.5 of the DSU and therefore, are not within the Panel's jurisdiction;
- (b) the relevant date for assessing the consistency of the measures "taken to comply" with the covered agreements is the date of establishment of the Panel;
- (c) certain claims raised by India in its first submission with respect to findings set out in the original measure which were not challenged by India before the original Panel, and which have not been modified by the measures at issue in this dispute, are not properly before this Panel; and

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(d) the following claims raised by India in its first submission were not stated in its request for establishment of the Panel, contrary to the requirement imposed by Article 6.2 of the DSU, and are, therefore, not within the Panel's terms of reference:

- the claim that the EC acted inconsistently with Article 4.1(i) of the AD Agreement by excluding from the "Community industry" a producer which had imported bed linen from Pakistan;
- the claim that the EC failed to respect the "reasonable period of time" agreed by the parties under Article 21.3 (b) of the DSU.

.3 The EC further requests the Panel to find in the EC's favor on the claims submitted by India for the reasons stated in Section III of the EC's first written submission.

.4 Finally, the EC requests that, should the Panel conclude that the EC has violated Article 2.2.2(ii) of the AD Agreement, it should find that such violation has not nullified or impaired the benefits accrued to India under that provision.

ARGUMENTS OF THE PARTIES

.1 The arguments of the parties are set out in their submissions to the Panel. The parties' submissions are attached to this Report as Annexes (see List of Annexes, page **Error! Bookmark not defined.**).

ARGUMENTS OF THE THIRD PARTIES

.1 The arguments of the third parties, Japan, Korea, and the United States are set out in their submissions to the Panel and are attached to this Report as Annexes (see List of Annexes, page **Error! Bookmark not defined.**).

FINDINGS

A. *General Issues*

1. *Standard of Review*

.1 Although neither party has explicitly addressed these general issues, we consider it useful to recall, at the outset of our examination, the standard of review we must apply to the matter before us.

.2 Article 11 of the DSU sets forth the appropriate standard of review for panels. Article 11 imposes upon panels a comprehensive obligation to make an "objective assessment of the matter", an obligation which embraces all aspects of a panel's examination of the "matter", both factual and legal.