EU - India Bed Linen Dispute

A case that reconfirms WTO as a Mahout

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Before getting into the nitty-gritty of this trade dispute concerning the imposition of definitive antidumping duties by the European Communities on cotton-type bed linen from India, let us refresh our knowledge about the concept – antidumping. Further, a fair knowledge about the textiles and clothing (T&C) trade scenario at both European Union (EU) and India as well as globally will definitely help us to further realise the gravity of the dispute in question.

According to World Trade Organisation (WTO), if a company exports a product at a price lower than the price it normally charges in its own home market, it is said to be dumping the product. Antidumping action means charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to the normal value so as to remove the injury to domestic industry in the importing country. Antidumping measures can only be applied if the dump hurts the industry in an importing country. Therefore, first a detailed investigation has to be conducted according to specified rules, which must evaluate all relevant economic factors that have a bearing on the state of the industry in question. If the investigation shows dumping is taking place and domestic industry is being hurt, the exporting company can undertake to raise its price to an agreed level in order to avoid antidumping import duty.

As of trade scenario, the Indian Textiles Industry has an overwhelming presence in the economy of the country. Apart from providing one of the basic necessities of life, the textiles industry plays a pivotal role in contributing industrial output, employment generation, and the export earnings of the country. Currently, it contributes about 14 percent to industrial production, 4 percent to the Gross Domestic Product (GDP) and over 20 percent to the country's export earnings. The textiles sector is the second largest provider of employment after agriculture, providing direct employment to over 35 million people.

In the last three years, the sector has attracted a total investment of US$5.7bn. The cumulative foreign direct investment (FDI) flown into this sector in the period 1991-2007 has been US$575.27mn, representing 1.22 percent of total FDI attracted by the country. Moreover, since EU is a major market for India, any effort to increase exports to EU is vital. During 2007, as per Eurostat data, India was third in export ranking in the EU textiles market after China and Turkey with a share of 11.5 percent. Thus, the all round growth of this industry has a direct bearing on the improvement of India's economy.

Likewise, the EU T&C sector is an important part of European manufacturing industry with a turnover of US$296bn produced in roughly 1,77,000 enterprises employing more than 2 million people. The average import penetration is significantly higher than for manufacturing as a whole, especially in clothing (41 percent in value) where the EU industry has experienced serious difficulties in competing with foreign operators working with lower labour costs. From the perspective of the EU, low-cost textile imports have both advantages and drawbacks. While the EU consumers would benefit considerably by such products, the big textile manufacturers and workers would be drastically affected by such imports, which would drive them out of business, leading to unemployment.

T&C: International Trade Scenario

In the 1950s there was a gradual removal of Quantitative Restrictions in major developed countries due to the general liberalisation efforts pursued in tune with the General Agreement on Tariffs and Trade (GATT). This brought about substantial increases in T&C imports originating in low-cost countries into major developed countries. These huge low-cost imports posed a major threat to the developed countries' producers. To alleviate this situation, some importing countries convinced exporters of cotton textiles to conclude voluntary export restraint agreements. As a consequence, for many decades the textile sector was governed by specially negotiated rules that were designed to regulate trade in cotton textile products and was kept outside the purview of GATT disciplines. Discriminatory restraints took the form of the 1961 Short-Term Arrangement Regarding International Trade in Cotton Textiles, followed in 1962 by the Long-Term Cotton Textiles Arrangement (1962-1973).

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From 1974 onwards, global trade in this sector was governed by the Multi-Fibre Arrangement (MFA) under which many industrialised countries through bilateral agreements or unilateral actions, established quotas on imports of T&C from more competitive developing countries. Also, it extended the coverage of the restrictions on T&C from cotton products to include wool and man-made fibre products. Thus the MFA enabled developed nations, mainly the US, EU and Canada to restrict imports from developing countries through a system of quotas. Though this Arrangement was initially designed to operate for a limited period of four years to provide breathing time to the textile industry of the developed countries to make structural readjustments, the quota regime got extended repeatedly for varying periods till 1994. In fact, from 1987 onwards, the scope of this Arrangement was extended to include products like vegetable fibres and silk blend within its purview.

It was only after more than three decades of special and increasingly complicated regimes governing international trade in T&C products that from 1 January 1995 international T&C trade underwent a fundamental change under the 10-year transitional programme of the WTO's Agreement on Textiles and Clothing (ATC) that was negotiated during the Uruguay Round. This Agreement mandated progressive phase out of import quotas established under MFA by integrating T&C into the multilateral trading system by January 2005. This integration of the textile sector into GATT had been one of the major objectives in the Uruguay Round for India, as exports of textiles at that time accounted for about 36 percent of total exports from India and was the largest net foreign exchange earner for the country.

What was the Dispute?

Bed Linen I

On 25 January 1994 the European Commission (EC) initiated an antidumping proceeding against import of bed linen from India, Pakistan, Thailand and Turkey. This proceeding, largely referred to as Bed linen I, was initiated based on a complaint received from the Committee of the Cotton and Allied Textile Industries of the European Communities (Eurocoton) – the EC Federation of National Producers' Associations of Cotton Textile Products. The complaint contained evidence of significant dumping based on a comparison of the export price to the EC and the constructed normal value, which the complainants considered appropriate in view of their claims that similar products are not sold in sufficiently significant quantities on the domestic markets of the countries concerned.

With regard to injury, it was alleged that the market share of these four countries increased from 24.5 percent in 1990 to 29 percent in 1992, and that the prices at which the imports came into the EC undercut those charged by the EC producers by between 40 percent and 52 percent. It was further claimed that the market share of the Community industry had declined, and that their profitability decreased drastically, including a certain number of jobs had been lost due to the allegedly dumped imports.

However this complaint did not proceed much further. Although not stated in the notice of termination, according to India, the immediate reason for this withdrawal was an overwhelming lack of cooperation from the EC industry. This was supported by many during those times and was also evident from the third party submission filed by Egypt. The Bed linen I antidumping proceeding was terminated on 10 July 1996.

Box: 1 Four Other Antidumping Proceedings by EC

Eurocoton also submitted complaints against alleged dumping of cotton fabrics and synthetic fabrics from India. The two antidumping proceedings pursuant to these complaints were initiated around the same time as Bed linen I, and terminated largely for the same reasons and on the same grounds. The proceeding concerning cotton fabrics was thereafter re-initiated twice, in neither case leading to definitive antidumping duties, and the second time leading to WTO consultations between India and the EC.

Source: WT/DS141/R, Annex 1-1

Bed Linen II

However, a fresh complaint by Eurocoton was initiated just 20 days after the withdrawal of the first complaint, i.e. on 30 July 1996. It alleged that imports of cotton type bed linen products from India, Pakistan and Egypt were being imported into the EU markets at dumped prices, causing material injury to domestic production. The EC initiated an antidumping proceeding on the basis of this new complaint on 13 September 1996. During this proceeding, in view of the large number of Indian producers and exporters, the EC decided to first take a sample from among the Indian exporters, and to determine the dumping margin for the co-operating exporters on the basis of a weighted average of this sample. As in the Bed linen I proceeding, Indian exporters were represented by the Cotton Textiles Export Promotion Council of India (TEXPROCIL).

Based on the investigation, the EC imposed provisional antidumping duties with effect from 14 June 1997 and definitive antidumping duties varying from 2.6 to 24.7 percent were imposed on bed linen from India by Council Regulation on 28 November 1997. India disputed several aspects of the Regulation and on 3 August 1998 requested consultations with the EC under the WTO Dispute Settlement process. During the course of consultations, India set out its arguments that the methodologies used by EU officials to arrive at both their determinations of dumping and material injury were flawed and inconsistent with the requirements of the Antidumping Agreement. The EU, for its part, maintained that there was sufficient scope within the rules of the Antidumping Agreement to justify the methodologies employed and the conclusions reached.

Box 2: Margin of Dumping

Margin of dumping refers to the difference between the normal value of the like article and the export price of the product under consideration. This is normally established on the basis of:

- comparison of weighted average normal value with a weighted average of prices of comparable export transactions; or
- comparison of normal values and export prices on a transaction to transaction basis.

The margin of dumping is generally expressed as a percentage of the export price.

Given these indifferences, the consultations failed to reach at an amicable resolution and a WTO panel was established on 27 October 1999. On 30 October 2000, the WTO ruling accepted almost all the claims made by India against EU practice, the most important being invalidation of the zeroing method used by the EC to calculate duties. The EU decided to appeal and on 24 January 2001, the Appellate Body (AB) of the WTO also ruled against the EC. The AB further ruled that the EU's practice in constructing normal values on the basis of information limited to one supplier was inconsistent with the Antidumping Agreement. Therefore, the AB report concluded that the imposition of definitive antidumping duties by EC on imports of cotton type bed linen from India was inconsistent with the Agreement on Implementation of Article VI of the GATT 1994, i.e. the Antidumping Agreement, and further requested the EC to bring its measure into conformity with this Agreement.

Compliance Panel

On 7 August 2001, the Council of the EU adopted a regulation amending the original definitive antidumping duties on bed linen from India purporting to comply with the Dispute Settlement Body's (DSB's) recommendations in the original dispute while simultaneously suspending its application. India strongly disagreed that this re-determination complied with the DSB's rulings. Accordingly, India sought the establishment of a Compliance Panel in May 2002 to examine the existence or consistency of action taken by the EC to implement the DSB decision in the dispute. The Compliance Panel concluded that EC had complied with the DSB's decision in the original dispute. This prompted India to appeal certain issues of law and legal interpretations developed by the Compliance Panel. During this Appeal, while reversing the finding of the Compliance Panel, the AB held that EC's determination of volume of dumped imports for purposes of making the determination of injury was not based on an objective examination, and hence the EC failed to act consistently with provisions of Antidumping Agreement while implementing the rulings and recommendations of the WTO's DSB.

Controversial Terms

Volume of Dumped Imports

To analyse the effect of dumped imports there is a need to identify and evaluate trends in the data relating to the volume of dumped imports. Also, the provisions of Antidumping Agreement requires the investigating authorities to consider whether there have been an increase in the volume of dumped imports – either in absolute terms or relative to production or consumption in the domestic industry. Increase in volume of imports immediately preceding and during a time-period when domestic production is decreasing might indicate injury. On the contrary, if the volume of dumped imports has increased at the same time that the production and apparent consumption of domestically produced merchandise have remained steady or increased, then this might indicate a general expansion of overall demand rather than injury being caused by imports.

However, in this case the AB held that EC's determination of volume of dumped imports for purposes of making a determination of injury was not based on an objective examination. Further, it held that the EC's determination that all imports attributable to non-examined producers were dumped even though the evidence from examined producers showed that producers accounting for 53 percent of imports attributed to examined producers were not dumping did not lead to a result that was unbiased, even-handed and fair. Therefore, the AB held that the EC did not satisfy the requirements of paragraphs 1 and 2 of Article 3 to determine the volume of dumped imports on the basis of an examination that is objective.

Hence, the AB reversed the panel's finding on the determination of the volume of dumped imports. It ruled that the EU methodology to determine the volume of dumped imports in situations were not all exporters but only a sample where investigated, is not compatible with the WTO Antidumping Agreement.

Box 3: India, EU and Antidumping Procedures

Historical data reveal that the Indian producers are the major victims of frequent EU investigations. Out of a total of 115 antidumping investigations initiated against exports from India during 1995-2005, the highest numbers of cases are seen to have been filed by EU (33 percent), followed by US (17 percent), South Africa (13 percent), Indonesia (7 percent), Canada (6 percent), and Brazil (5 percent).

A product-wise analysis of cases facing Indian exporters indicates that the highest number of antidumping cases for a product are engineering products (including steel products), which account for 32 percent of the total cases, followed by textiles and articles (19 percent).

Box 4: Jurisprudence against Zeroing

From the beginning, the WTO DSB has widened the jurisprudence against zeroing. Initially, the complaining parties merely challenged certain specific applications of the zeroing methodology by defending parties, as in the present bed linen dispute. In this case, the AB ruled that zeroing is WTO-inconsistent because it prevents true average-to-average comparisons as called for by the provisions of the Antidumping Agreement. This reasoning left open the possibility that zeroing may be permissible when dumping is calculated another way.

However, as the AB's anti-zeroing rulings gathered momentum, complainants began to challenge the zeroing policy itself as such. For instance, in both US – Zeroing (EC) and US – Zeroing (Japan), the AB accepted the complaints and ruled in favour of EC and Japan, the complainants. Besides, shortly after Japan's complaint Mexico came up with another new complaint against US zeroing in the Mexican Stainless Steel case. To everyone's surprise, the WTO panel departed from the previous decisions of the AB's, and ruled that the US was not violating its WTO obligations by the use of zeroing. However, in May 2008, the AB reversed this decision of the panel. This AB ruling, reversing the panel's findings, was not unexpected, and follows a long line of earlier rulings and the analyses behind those rulings.

As a result, the US is now obligated to repeal its zeroing policy in its entirety nearly on all fronts – both in the original investigations and in the administrative (periodic) reviews. Plus, apart from reversing the panel ruling on the US zeroing practice, the AB, without providing a specific ruling or recommendation to the DSB, further held that "the security and predictability in the dispute settlement system, as contemplated in Article 3.2 of the Dispute Settlement Understanding (DSU), implies that, absent cogent reasons, an adjudicatory body will resolve the same legal question in the same way in a subsequent case."

Thus the AB attempts to bring in the principle of *stare decisis* into the WTO jurisprudence, ensuring predictability and security of the multilateral trading system though it is contrary to the provisions of the DSU.

Zeroing

From the period of GATT, zeroing has been an issue for debate as it tends to inflate final dumping margins by preventing negative margins from offsetting positive margins. Also this process has since been challenged in a number of disputes between the US and countries such as Canada, the EU, Japan, Mexico, Ecuador, and Thailand. Each time the DSB has consistently ruled against this practice where investigators treat transactions with negative dumping margins as having margins equal to zero in determining weighted average antidumping margins.

In this case, India asserted that EU had acted inconsistently with the provisions of the Antidumping Agreement by counting negative dumping amounts as zero for certain types of bed linen, when calculating the overall weighted average dumping margin for the like product, bed linen. This EU method, according to India, would always lead to a higher dumping margin than was envisaged by the Antidumping Agreement. This contention was accepted both by the panel and the AB, which concluded that the EC acted inconsistently with the provisions in establishing dumping margins on the basis of a methodology which included treating negative price differences as zero.

Significance & Livelihood Concerns

For India, with respect to textile exports, bed linen is a major product to the EU market since it is the single largest market for India's bed linen products and the country is also the second largest supplier of bed linen items to EU. Moreover, hundreds of textile mills in India are involved in the production of the bed linens that are exported to the EU. Hence, any alteration in trade in this sector does create a huge impact on the economy and on the industry as a whole.

The Indian company 'Anglo-French Textiles', one of those affected by the EU action, saw its revenue fall by more than 60 percent between 1997 and 2000, from US$11mn to US$4mn. This forced the industry to get rid of more than thousands of jobs over this period, principally because of the shutting down of a number of stitching units, introducing voluntary redundancy scheme and freezing further recruitment. This means huge loss of employment opportunities for potential workers, and an overall negative economic impact, being both the biggest industry and the employer. Moreover, though the dispute was finally decided and settled by WTO favouring India, by that time exports of bed linen had fallen considerably from US$127mn in 1998 to US$91mn in 2001. Also, there is no provision within the multilateral rules for such affected companies to seek reparation for the losses they incurred.

Besides, the EU merely altered the terms of the complaint slightly and reapplied the duties highlighting the effectiveness of antidumping measures as protectionist tools. As per the 2003 Annul Report of TEXPROCIL, in view of the back-to-back antidumping

Box 5: Bed linen: The Antidumping Game

It is amazing to note that T&C sector has seen 197 initiations of antidumping actions during 1990-99 periods. The EC has been, by far, the biggest user of antidumping cases in the textile sector. Equally noticeable is the fact that the initiations of investigations were launched on "motivated" complaints by the same industry association – *Eurocoton*. All the complaints turned out to be wrong, with no positive determination by the investigating authorities.

Source: The Dawn, web edition, 29 March 2004. Accessible at: www.dawn.com/2004/03/29/ebr6.htm

investigations, India's share in imports of bed linen have declined from 16 percent in 1997 to 9.7 percent by the end of 2002 in terms of volume and from 14.7 percent to 8.1 percent in terms of value. Thus, the frequent antidumping investigations against Indian bed linen led to unemployment, closure of factories, and increased poverty in few cases.

Conclusion

Smaller countries are always hesitant to approach WTO DSB to claim their rights due to fear of huge expenses, lack of technical and related competence and retaliation on other fronts. However, improvements in the procedures and the availability of resources to address the above requirements at the WTO to assist developing countries to effectively unravel a dispute have to a larger extend mitigated this concern.

In addition, cases like these often prove that the WTO is particularly important to smaller countries since it is a rule based system for international trade and rules benefit weaker members equally. Also cases like this clearly demonstrate the fact that developing countries can successfully take on the major members of the WTO and hold them to account. What needed is the sheer determination, perseverance and the spirit to fight and win a case to defend their county's rights and interests.

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