

EC – BED LINEN¹

(DS141)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	India	ADA Arts. 2, 3, 5, 12 and 15	Establishment of Panel	27 October 1999
			Circulation of Panel Report	30 October 2000
Respondent	European Communities	DSU 6.2	Circulation of AB Report	1 March 2001
			Adoption	12 March 2001

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Definitive anti-dumping duties imposed by the European Communities, including the European Communities' zeroing method used in calculating the dumping margin.
- Product at issue: Cotton-type bed linen imports from India.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- ADA Art. 2.4.2 (dumping margin – "zeroing"): The Appellate Body upheld the Panel's finding that the practice of "zeroing", as applied by the European Communities in this case in establishing "the existence of margins of dumping", was inconsistent with Art. 2.4.2. By "zeroing" the "negative dumping margins", the European Communities had failed to take fully into account the entirety of the prices of some export transactions. As a result, the European Communities did not establish "the existence of margins of dumping" for cotton-type bed linen on the basis of a comparison of the weighted average normal value with the weighted average of prices of all transactions involving all models or types of cotton-type bed linen.
- ADA Art. 2.2.2(ii) (profits calculation): The Appellate Body reversed the Panel's finding and found that the method set out in Art. 2.2.2(ii) for calculating amounts for administrative, selling and general costs and profits cannot be applied where there is data for only one other exporter or producer. The Appellate Body also found that, in calculating amounts for profits, sales by other exporters or producers not made in the ordinary course of trade may not be excluded. The Appellate Body, therefore, concluded that the European Communities acted inconsistently with Art. 2.2.2(ii).
- ADA Art. 3.4 (injury): The Panel found that the European Communities acted inconsistently with Art. 3.4 by failing to consider "all" injury factors listed in Art. 3.4. The Panel also found that the European Communities could consider under Art. 3 information related to companies outside of the sample, where such information was drawn from the "domestic industry". However, the European Communities acted inconsistently with Art. 3.4 to the extent that it relied on information on producers not part of the "domestic industry".
- ADA Art. 15 (developing country): The Panel found that Art. 15 requires that a developed country explore the possibilities of "constructive remedies", such as the imposition of anti-dumping duties in less than the full amount and price undertakings, before applying definitive anti-dumping duties to exports from a developing country. The Panel concluded that the European Communities acted inconsistently with Art. 15 by failing to reply to India's request for such undertakings.

3. OTHER ISSUES²

- DSU Art. 6.2 (panel request – identification of a provision): The Panel dismissed India's claim related to ADA Art. 6, on the grounds that India failed to identify that provision in its panel request and, thus, denied the responding party and third parties of notice. The Panel did not accept India's reliance on the fact that this provision (Art. 6) was included in its consultations request and was actually discussed during consultations, considering that consultations are a tool to clarify a dispute and often issues discussed during consultations will not be brought in the actual case.

¹ *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*

² Other issues addressed in this case: ADA Art. 2.2 (reasonability); ADA Art. 3 ('all' imports in the context of injury analysis); ADA, Art. 5.3 (examination of evidence); ADA Art. 5.4 (industry support); ADA Art. 12.2.2 (notification); identification of provisions in panel request (India's claim under Art. 3.4); *amicus curiae* submission; standard of review under ADA Art. 17.6(ii); evidentiary issues (panel – DSU, Art. 11 and 13.2).

EC – BED LINEN (ARTICLE 21.5)¹
(DS141)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	India	ADA Arts. 3 and 15	Referred to the Original Panel	22 May 2002
			Circulation of Panel Report	29 November 2002
Respondent	European Communities		Circulation of AB Report	8 April 2003
			Adoption	24 April 2003

1. MEASURES TAKEN TO COMPLY WITH THE DSB'S RECOMMENDATIONS

- EC Regulation 1644/2001 pursuant to which the European Communities reassessed the original anti-dumping measure on bed linen. Also, EC Regulation 696/2002 according to which the European Communities reassessed the injury and causal link findings.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- ADA Art. 3.1 and 3.2: The Appellate Body reversed the Panel's findings on this issue and concluded that the European Communities' consideration of *all* imports from *un*-examined producers as dumped for the purposes of the injury analysis was based on a presumption not supported by positive evidence. Therefore, the Appellate Body held that the European Communities acted inconsistently with Art. 3.1 and 3.2 as it had not determined the "volume of dumped imports" on the basis of "positive evidence" and an "objective assessment".
- ADA Art. 3.1 and 3.4: The Panel rejected India's claim that the European Communities did not have information on the economic factors and indices in Art. 3.4 (i.e. inventories and capacity utilization). The Panel concluded that the European Communities had collected data on these factors and that it did conduct an overall reconsideration and analysis of the facts with respect to the injury determination, as would an objective and unbiased investigating authority. In this relation, the Appellate Body rejected India's allegation that the Panel acted inconsistently with DSU Art. 11 and ADA Art. 17.6(ii).
- ADA Art. 3.5: The Panel rejected India's claim under Art. 3.5, as that provision does not require that the investigation authority demonstrate that the dumped imports *alone* caused the injury.
- ADA Art. 15: The Panel found that the European Communities had not violated the requirement of Art. 15 by failing to explore the possibilities of constructive remedies before applying anti-dumping duties because the European Communities had suspended application of these duties on Indian imports.

3. OTHER ISSUES²

- Terms of reference (DSU Art. 21.5): The Appellate Body upheld the Panel's decision not to examine India's claim on "other factors" under Art. 3.5, as it had been resolved by the original panel (i.e. the claim was dismissed as India had failed to make a prima facie case) and thus was outside the Panel's terms of reference. The Appellate Body concluded that the original panel's finding, which was not appealed and was adopted by the DSB, provided a "final resolution" of the dispute between the parties regarding that particular claim and that specific component of the implementation measure.

¹ *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India*
² Other issues addressed: DSU Art. 21.2 (matters affecting interests of developing countries); DSU Art. 11; and ADA Art. 17.6.