

ANTI-DUMPING ACTIONS IN THE AREA OF TEXTILES AND CLOTHING: DEVELOPING MEMBERS' EXPERIENCES AND CONCERNS

The following communication, dated 30 January 2003, has been received from the delegations of Bangladesh; the People's Republic of China; Colombia; Costa Rica; Egypt; Guatemala; Hong Kong, China; India; Indonesia; Korea; Macao, China; Maldives; Pakistan; Paraguay; Peru; Thailand and Vietnam.

I. INTRODUCTION

1. With respect to anti-dumping practices, the Ministerial Conference in Doha agreed to the following negotiating mandate:

"28. In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreement[s] on Implementation of Article VI of the GATT 1994 [...], while preserving the basic concepts, principles and effectiveness of the[se] Agreement[s] and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices that they seek to clarify and improve in the subsequent phase. [...]"¹.

2. Reflecting a widespread concern among developing country Members about the disruptive effects of anti-dumping actions involving their exports, Ministers also adopted a number of decisions pertaining to the subject (under their Decisions on Implementation-related Issues and Concerns). These will be brought out, as appropriate, in this paper.

II. PURPOSE OF THIS PAPER

3. In accordance with the Ministerial mandate quoted above, the purpose of this paper is:

- (A) To share developing countries' experience as regards anti-dumping activity affecting their exports of textiles and clothing – the largest industrial export sector for them.
- (B) To spell out developing countries' needs in the area. It may be emphasised in this connection that the Ministerial mandate specifically requires that “the needs of developing and least-developed participants” be taken into account.
- (C) To illustrate one of the particularly important aspects of anti-dumping – initiations – as a matter for improved discipline.

¹ WT/MIN/(01)/DEC/1 dated 20 November 2001

It is without prejudice to any other submissions by the sponsors of this paper.

A. THE EXPERIENCE

A.1: A preliminary observation

4. The textile and clothing sector has seen the initiation of a large number of anti-dumping actions during the last several years. With 197 initiations during 1990 – 99 it ranked 5th among all sectors.²

5. The European Communities (EC) has been by far the biggest user of anti-dumping cases in the textile sector, targeting it for as many as 53³ new initiations during 1994 – 2001 or 3rd among all sectors. The only other sectors witnessing higher numbers of EC initiations were iron and steel (77 initiations) or chemicals (56 initiations).⁴

6. Of the above total of 53 new initiations by the EC in the textile sector, 46⁵ (or 87%) targeted imports from developing countries. And all but two were initiated on complaints by interested industry associations.

7. Although the anti-dumping activity involving textile and clothing products in the United States, the other major importing Member, has been less-pronounced, the few actions taken by it are indicative of similar effects on developing exporting countries concerned.

8. It is also pertinent to point out at the outset that the sector has long been subject to quota restrictions in these markets.

A.2: Experience with specific cases and their distorting effects

9. It is impracticable to present a comprehensive analysis of each and every aspect of anti-dumping activity in the span of a single paper. The following is therefore based on major predilections gleaned from representative cases.

(i) *The European Communities*

10. To start with, it may be instructive to glance through the following table. It depicts the EC initiation and disposal of investigations into alleged dumping, and consequent injury to its domestic producers, of three product groups from a number of developing countries.

² UNCTAD (2000), *Impact of Anti-dumping and Countervailing Duty Actions*, page 21.

³ This number does not include 11 anti-subsidy investigations.

⁴ *Annual reports of the EC Commission to the European Parliament on the Community's Anti-dumping and anti-subsidy activities.*

⁵ Of the remaining seven, two involved imports from developed countries and five from transition economies.

Table 1
A protectionist pattern

Product	Synthetic fabric	Cotton fabric	Bed linen
Complainant	Eurocoton	Eurocoton	Eurocoton
Complainant's status	Industry Assn.	Industry Assn.	Industry Assn.
Complaint lodged	September 93	September 93	September 93
EC Investigation initiated	20.1.94	20.1.94	25.1.94
Imports from targeted countries ⁶	ECU 251.4 mn	ECU 478.7 mn	ECU 246.5 mn
Import share, targeted countries	Volume 66.6%	43.9%	57.5%
	Value 50.2%	32.3%	57.0%
Result of investigation	No action	No action	No action
Investigation dropped	19.2.96	19.2.96	9.7.96
Time taken in investigation	2 years	2 years	2 ½ years
Whether product under QR	Yes	Yes	Yes

Note: Import data in this table, and elsewhere in this paper, is based on Eurostat, Intra and Extra – EU trade.

11. A few conclusions stand out from the facts recapitulated in the above table:

- It is noticeable that the initiations of investigations were launched on motivated complaints by the same industry association.
- All the complaints proved to be wrongful, with no positive determination by the investigating authorities.
- The simultaneous initiations covering such a large segment of the production chain were in themselves indicative of a protectionist bias, considering in particular that, in its submission to the EC Commission, the complainant Association had asserted that “Among other things, the majority of the countries named have been recognized as practising dumping of upstream products in the production chain”.

Obviously, the notion that countries practise dumping (as opposed to companies) was/is misconceived.

- The very fact that developing exporting countries accounting for 44% to 67% of EC imports in these products were alleged to be dumping was also indicative of a strong protectionist purpose.
- It is significant, too, that during the year preceding the launch of these initiations (1993), the value of extra-EC imports in these three products from the targeted countries amounted to a massive ECU 976.6 million⁷ (\$ 1.14 billion).
- Finally, it is also notable that the investigations were prolonged over two years or even longer.

In this connection it is pertinent to recall that according to the Tokyo Round Code, which applied to the cases under reference, investigations were required to be concluded within one year after their initiation. Likewise, the Uruguay Round Agreement on Anti-dumping also requires that investigations be concluded within one year and in no case more than 18 months after their initiation.

⁶ Based on product coverage of first investigations and import data for 1993, i.e., the year preceding the investigations. For later investigations, the product coverage and the targeted countries were changed (for which please see paragraph 13 of this paper and the table at Annex).

⁷ Based on the product coverage and exporting countries, the subject of first investigations, i.e., India, Indonesia, Pakistan, Thailand for synthetic fabrics; China, India, Indonesia, Pakistan, Turkey for cotton fabrics; and India, Pakistan, Thailand, Turkey for bed linen.

Pattern of Investigations continues

12. The cases did not close with the termination of first investigations brought out in Table 1 above, however. The same industry association, Eurocoton, persisted with the complaints which led to the re-initiation of further investigations by the Commission. These complaints were lodged within a matter of days of the close of previous investigations, in some cases even earlier. Developments with respect to these, and yet more back-to-back, investigations are summarized in Table 2 below.

Table 2
The pattern continues

Product	Cotton fabrics	Bed linen
Second investigation		
Previous investigation terminated	19.02.96	9.07.96
New complaint lodged by Eurocoton	8.01.96 ⁸	30.07.96
EC investigation initiated	21.02.96 ⁹	13.09.96
Provisional duties announced	20.11.96	13.06.97
Provisional duties lapsed	18.05.97	
Definitive duties imposed	None	28.11.97
Third investigation		
Yet another complaint by Eurocoton	26.05.97 ¹⁰	
EC investigation initiated	11.07.97	
Provisional duties announced	7.04.98	
Provisional duties lapsed	5.10.98	
Panel/Appellate Body fault EC methodology		3.10.2000(Panel) ¹¹
		1.03.2001(AB) ¹²
Still further investigation		
Yet another complaint by Eurocoton		3.9.2002 (India) 4.11.2002 (Pak)
EC investigation initiated		4.12.2002 (India) 18.12.2002 (Pak)

13. The product coverage for the first investigation in cotton fabrics was much wider (118 EC Combined Nomenclature – CN – positions.¹³) However, out of these 118 positions, the coverage was reduced to 15 and 14 CN positions for the second and third investigations respectively.¹⁴ The countries targeted were also changed. Egypt was added for cotton fabrics. For bed linen Egypt was added whereas Thailand and Turkey excluded. The result was that the share of extra-EC imports targeted for alleged dumping investigations became even larger: 59 per cent compared to 44 per cent in the first investigation in terms of volume, and 56 per cent compared to 32 per cent in terms of value.

⁸ Notice that the complaint is lodged even before the termination of first investigation.

⁹ Notice also that this new investigation is initiated just two days after the first investigation closed.

¹⁰ Here also, a new investigation is launched within 9 days after the previous case is closed.

¹¹ Panel Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/R.

¹² Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/AB/R.

¹³ Which is based on the harmonized classification system (HS).

¹⁴ For details of product coverage in each of the three successive investigations, please see the table at Annex.

14. The following conclusions flow from the enumeration in Table 2 above:

- The alacrity with which the initiations were launched tells a lot and is worthy of note.
- Also apparent is the persistence of a protectionist bias in these initiations, as are flaws in the automatic initiation of investigations following alleged complaints by an interested party, the concerned industry association in these cases.
- The initiations nevertheless resulted in significant distorting effects on businesses and the exporting developing countries involved (brought out in Table 3 below).
- The damage proved to be unjustified, especially as the very methodology used by the EC in dumping determinations has since been discredited by a Panel and the Appellate Body.

The distorting effects of EC initiations

15. It is perhaps best to demonstrate the damaging effect of initiations referred to in Tables 1 and 2 by bringing out the declines in import shares suffered by the targeted countries.

Table 3
Changes in targeted countries' import shares

Product	Before Action	Following action	After termination	Remarks/Countries Targeted
<u>Synthetic fabrics</u>	<u>1993</u>	<u>1995</u>	<u>1997</u>	
Value	50.24%	52.89%	56.53%	Investigation terminated in 199 India, Indonesia, Pakistan, Thailand
Volume	66.64%	63.57%	70.44%	
<u>Cotton fabrics</u>	<u>1993</u>	<u>1998</u>	<u>2000</u>	
Value	55.83%	38.58%	42.36%	Duties lapsed in 1998; China, Egypt, India, Indonesia, Pakistan, Turkey
Volume	59.04%	37.60%	40.44%	
<u>Bed linen</u>	<u>1993</u>	<u>1994</u>	<u>2000</u>	
Value	49.00%	47.56%	41.31%	Definitive duties ended in 2001 ¹ Egypt, India, Pakistan, Thailand
Volume	51.84%	50.90%	44.65%	

16. Notice the declines in import shares of affected countries, particularly in cotton fabrics where back-to-back investigations continued from January 1994 to October 1998! In a nutshell the following consequences stand out from the initiations under reference.

- In the case of synthetic fabrics, the import share of the targeted countries dropped from 66.6 per cent before the initiation of investigations to 63.6 per cent after the initiation.
- In the case of cotton fabrics, where three back-to-back investigations continued over several years, the import share of targeted countries showed the most pronounced declines, from 59 per cent to 37.6 per cent. Their share could not recover to pre-initiation levels even after the proceedings lapsed.
- In the case of bed linen, too, the shares of targeted countries dropped markedly.

¹⁵ However, the proceedings were only suspended in case of India.

17. Thus by merely provoking the initiation of investigations, the complainant industry association was able to cause substantial harm to the trade interests of the targeted countries, besides a host of related costs on the businesses concerned. All this, despite that the products involved were already under severe quota restrictions.

Another glaring reality

18. To conclude the experience with these cases, it is also pertinent to point out that exporting firms in developing countries are generally small or medium- sized, with small export volumes, creating a strong doubt about the very capacity of dumping on their part. It is instructive in this regard to draw some indications from the initiations reviewed earlier.

19. Throughout the process of these cases, it was known both to the complainant industry association and the EC authorities that there were large numbers of exporters in the countries concerned. This was confirmed by subsequent events, especially when the Commission announced the imposition of provisional duties in cotton fabric and bed linen cases.

20. In this regard it is interesting to look at the average export volumes by firms on whom anti-dumping duties were announced. The following calculations have been made on the basis of the number of companies named in the relevant EC notices.

Table 4
Average exports by firms from targeted countries

Values in Million Ecu				
Product	Targeted country	Import value From country	Firms from country (No.)	Average import value per firm
Cotton fabrics ¹⁶	Egypt	45.42	14	3.24
	India	111.81	98	1.14
	Indonesia	45.32	22	2.06
	Pakistan	73.79	136	0.54
Bed linen	Egypt	25.14	8	3.14
	India	91.79	86	1.07
	Pakistan	130.66	62	2.11

21. Considering that there might be even more firms than those named in the notice, and the fact that duties were also announced for such other firms, the final averages per firm would in fact amount to be even lower.

22. In any event, the following points arise:

- The number of firms alleged as dumping is so large!
- Could small companies, sometimes accounting for as little as ECU 0.5 million worth of exports, be capable of dumping and causing injury?
- How might such small companies be expected or able to defend their interests by taking advantage of any procedural rights in investigations, even if these rights might theoretically be

¹⁶ Note: The number of firms from China whose exports were also the subject of these investigations not indicated in the relevant EC notice. The data in this table are on the basis of imports in the investigation period (1995 in the case of cotton fabrics and 1996 in the case of bed linen).

available to them (especially when the costs of defence are recognized to be daunting even by large businesses)?

(ii) *The United States*

23. In the case of the United States, the following anti-dumping orders and the results of sunset reviews with respect to them bear reviewing:

Table 5
Anti-Dumping Duties can stay for years

<u>Product</u>	<u>Exporting Country</u>	<u>Duty first imposed</u>	<u>Sunset Review</u>	<u>Result of Sunset review</u>
Greige polyester printcloth	China	16. 9.1983	2.11.1998	Duty continued
Cotton shop towels	Bangladesh	20. 3.1992	1999	- do -
Cotton shop towels	China	4.10.1983	- do -	- do -
Cotton shop towels (CVD)	Pakistan	9. 3.1984	- do -	- do -

Source: G/ADP/N/92/USA and G/SCM/81/USA.

24. The details of the problems highlighted by these cases are beyond the limited scope of this paper. A few points however deserve to be noted:

- Notice the length of time the duties have been in effect:

In the case of greige polyester printcloth	19	years
In the case of cotton shop towels		
From China	19	years
From Pakistan	18 ½	years
From Bangladesh	10 ½	years

- In all cases, imports in these products had also been under quota restriction for the countries concerned.
- During the sunset review process, the US domestic industry association – American Textile Manufacturers Institute (ATMI) – petitioned the investigating authority with a response in the review pertaining to greige printcloth. With respect to cotton shop towel cases, a sole US producer, known to champion the cause of protection to domestic industry filed a response to the investigating authority.
- In neither of the reviews were any responses filed by any parties from the exporting countries concerned, apparently due to lack of resources.
- In all cases, the continuing duty orders were passed on the ground that revocation of duty orders would be likely to lead to continuation or recurrence of dumping (or subsidization) and of material injury to US industry within a reasonably foreseeable time. Interestingly, in China's case, there have been no imports of greige polyester printcloth since the imposition of anti-dumping duties.

A.3: *Pressure for protection remains acute*

25. At this juncture it is pertinent to recall that trade in textile and clothing has remained under quota restriction for four decades. In the face of the impending elimination of these restrictions,

domestic lobbies in major restraining countries which have long enjoyed blanket protection have of late shifted their attention to contingent trade remedies. They are prone to equating reduction in import prices with dumping (irrespective of whether it be due to heightening of competition or other causes such as declines in prices of inputs for downstream production).

26. Thus, for example, in comments filed with the United States Trade Representative in connection with the US approach to negotiations in the area of rules under the Doha work programme, the ATMI proceeds on the following presumption: “After all quantitative restrictions on textile and apparel imports are abolished, some exporting countries will undoubtedly turn to subsidies or dumping in order to give them the edge needed to maintain a presence in our market. The industry cannot be disarmed during this trade firestorm”.¹⁷

27. It is also pertinent that, earlier, the US Secretary of Commerce assured the textile caucus in the House of Representatives in return for its support to the passage of the Trade Promotion Authority legislation that “I want to emphasize the Administration’s commitment to enforcing our trade remedy laws generally, and *on behalf of our textile industry in particular*”.¹⁸

28. A recent IMF/World Bank study has also concluded that “the back loading of effective liberalization under the ATC is particularly unhelpful, as it turns what could have been a gradual adjustment process into a shock at the end of the transition period... This raises concerns that political pressures might spark greater recourse to other forms of protection once quotas are phased out, with trade remedy actions... becoming a new ‘line of defence’”.¹⁹

B. THE DEVELOPING COUNTRY NEEDS

29. The importance of trade in textile and clothing for developing countries is well-known. Historically, the sector has been the first in the process of development of a number of countries. It accounts for about 20 per cent of developing countries’ exports of manufactured products. For some developing countries, especially the least-developed among them, its share in their export earnings is even larger. Manufacture of clothing, in particular, is a labour-intensive activity. The sector is, therefore, particularly important for the creation of employment opportunities in these economies.

30. Furthermore, in many cases, employment in textiles and clothing in developing countries has a strong gender dimension, implying the employment and empowerment of women.

31. Thus it is especially vital that:

- Developing countries are protected from unjustified recourse to trade remedy actions.
- The market access due to developing countries is not undermined by frivolous complaints and initiations of investigations into allegations of dumping.
- And developing countries are also spared the costs associated with the investigative process, bearing particularly in mind that developing country firms in general are small or medium sized.

¹⁷ Comments dated 1 May 2002 by the American Textile Manufacturers Institute in response to request by USTR in Federal Register Notice 02-6606. (See ATMI web site, www.atmi.org)

¹⁸ Letter dated December 6, 2001 by Commerce Secretary Donald L. Evans to Textile Caucus of the House of Representatives.

¹⁹ International Monetary Fund / The World Bank, 26 September 2002, “Market Access for Developing Country Exports – Selected Issues”, paragraph 68.

C. IMPROVING THE DISCIPLINE

32. As brought out in this paper, most often investigations are triggered by motivated complaints by industry interests/associations seeking to preserve their corner of production. Once the investigative process starts, its adverse effects begin to reflect on purchase orders.

33. In this connection it is significant that the European Community has also now recognized²⁰ that:

- "... Anti-dumping investigations bind considerable and increasing human and financial resources from the economic operators concerned" and that "this is not satisfactory for anyone".
- "The very initiation of an investigation can already put a heavy burden on exporters, importers", etc.
- "A special and clearly defined developing country package should be prepared..."

34. Finally, it may be recalled that, with respect to textiles and clothing, the Ministers in Doha decided that "Members will exercise particular consideration before initiating investigations in the context of anti-dumping remedies on textile and clothing exports from developing countries previously subject to quantitative restrictions under the Agreement [on Textiles and Clothing] for a period of two years following full integration of this Agreement into the WTO"²¹.

III. CONCLUSION

35. This paper reveals how wrongful complaints about alleged dumping lodged for protectionist aims and the resulting initiation of investigations caused harm to the trade interests of developing countries concerned. It also brings out how anti-dumping duties can remain in place for very long periods.

36. In light of concrete experience with the cases reviewed in this paper, it is apparent that a particularly important aspect of the Anti-Dumping Agreement that needs to be improved relates to the initiation of investigations. Once the investigative process is started, its adverse effects begin to reflect. As the industry associations in restraining developed countries, which have long enjoyed blanket protection due to the existence of quota restrictions on textile and clothing, appear pre-disposed to equating any price declines with dumping and pressures for protection continue to persist, it is imperative that adequate disciplines are provided to protect developing country firms from unnecessary initiations, particularly as these firms are generally small or medium-sized.

37. In the meantime, the restraining Members are invited to indicate as to how they would propose to give effect to the Doha Ministerial decision²² cited in paragraph 34 above.

²⁰ See WTO document TN/RL/W/13, *Submission by the European Communities Concerning the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement)*.

²¹ Paragraph 4.2 of the Ministerial Decisions on Implementation-Related Issues and Concerns (WT/MIN(01)/17).

²² Ditto.

38. We reserve our right to provide further elaborations, make submissions in relation to any other aspect of anti-dumping activity in light of experience in cases mentioned in this paper, and submit specific proposals in due course.

Annex

A glaring example of protectionist initiation
Evolution of product coverage for cotton fabric investigations

Investigation	CN codes	Brief description
1st	5208 11 10 – 5212 25 90 (118 CN positions)	Woven cotton fabric, all (unbleached, bleached, dyed, or yarns of different colours, printed)
2nd	5208 11 – 5208 19 5209 11 – 5209 19 (15 CN positions)	Woven cotton fabric, only unbleached
3rd	5208 11 90 – 5208 19 * 5209 19 (12 CN positions)	Woven unbleached cotton fabric (certain construction excluded)
	5208 11 90 – 5208 19 ** 5209 11 – 5209 19 (14 CN positions)	- ditto -, However 5209 11, 5209 12 added back

* As announced at time of initiation of investigation.

** As in notice imposing provisional anti-dumping duties.
