Pakistan's Textiles and Anti-Dumping Laws

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Abstract

Textile is one of the most heavily protected sector in developed countries. This paper addresses the issue of anti-dumping measures, a new form of trade restriction. Protectionism is still common place in textiles, tariffs remain high and progress in eliminating import quotas has been slow. In fact, protectionism is on the rise in a new guise: anti-dumping cases against Asian countries are multiplying in the US, EU and around the world. Pakistani textiles (yarn, unbleached grey cotton fabric and bed-linen) exports are being increasingly subjected to the initiation of anti-dumping investigations, which creates uncertainty and depresses business sentiment. Investigation periods are quite lengthy and the legal costs of defending against these cases are enormous. These result in a great loss of time that could be better spent in a productive manner. This phenomenon is a matter of great concern because it has created a damaging impact on the normal growth of trade. In fact, by merely initiating an anti-dumping case against exporting country's manufacturers, or even just threatening to do so, developed countries producers can cause extensive disruption to the market for an extended period of time. At the end of the day, whether dumping and injury are proven may no longer matter for some Asian manufacturers, who could be driven out of the market simply as a result of the case being initiated.

I. Introduction

In textiles, protectionism is on the rise - but in a new form. Instead of raising import tariffs or cutting import quotas, developed countries are slapping anti-dumping duties (ADD) on imports from the developing countries. Anti-dumping is popular mainly because world trade rules allow it. WTO rules allow countries to impose anti-dumping duties on foreign goods that are being sold cheaper than at home, or below the cost of production, when domestic producers can show that they are being harmed.

Anti-dumping measures are not only legal, they are also very flexible. Only some firms in an industry need complain for an investigation to be

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launched. It can be directed at specific firms and countries, and they can be hit with differing duties. The most important aspect about ADD is that these duties can be presented not as protection but as compensation against "unfair" competition. In theory, anti-dumping measures are intended to restore fairness to the market by ensuring that foreign-made goods are sold at a fair price. In practice, however, they can undermine all competition from a particular country, without regard to whether specific manufacturers are dumping their goods.

The Agreement on Textiles and Clothing (ATC), which currently governs the textile and apparel trade among WTO members, became effective on January 1, 1995. It is intended to gradually bring global trade in textiles and clothing into compliance with the principles of the WTO over a ten-year period. At the half-way mark, however, it already has become apparent that eliminating quotas will not end the obstacles for Asian suppliers to sell into the major importing markets, such as Europe and the United States. A number of anti-dumping actions have been brought in Europe, the most notable actions covering Pakistani fabric and bed-linen. And in the US, Malaysian and Indian manufacturers of elastic rubber tape - an essential component in swimwear and underwear - have been the subject of both anti-dumping and counter veiling duty investigations.

The likely replacement of quota with anti-dumping actions to protect US and EU textiles industries will have significant implications for Pakistani textile exporters and manufacturers. Anti-dumping actions means anti-dumping duties, which must be paid in addition to regular duties. Also, participating in a complex anti-dumping investigation is a considerably expensive and time-consuming undertaking. Pakistani textiles manufacturers and exporters whose products are being targeted have to collect and organise an enormous amount of data related to their domestic costs, sales and prepare for a complicated review process.

The paper proceeds as follows. In Part II a compact description of the complex WTO rules and procedures for levying ADD is given. Part II also reviews anti-dumping measures as competition inhibiting measures. Part III gives a detailed description of anti-dumping measures against different segments of the textile sector of Pakistan. Part IV includes the conclusion along with policy guidelines.

II. WTO Rules and Procedures for Levying ADD

America's dumping rules, copied by many countries - and the basis for the WTO code, Kennedy Round in the mid-sixties brought about a GATT Anti-Dumping Agreement, the European Union (EU) and

the US anti-dumping law implements Article IV[1] of the GATT agreement of April 1979 with the added elaboration of certain procedural rules. To incorporate measures agreed in the Uruguay Round, existing rules were replaced by the new Agreement on Anti-Dumping Practices (ADP). The WTO rules deal with two types of "unfair" trade practices which distort conditions of competition. First, the exported goods benefit from subsidies. Second, the exported goods are dumped in the foreign markets. The ADP allows members to levy Anti-Dumping Duties (ADD) on dumped imports. A product is considered to be dumped if the export price is less than the price charged for the like product in the exporting country. A product is also considered to be dumped if it is sold for less than its cost of production.

The dumping petition is typically filed by a domestic industry. Under the US law, the petition is actually filed with the two agencies: the US Department of Commerce (DOC) and the US International Trade Commission (ITC). The DOC determines whether goods are sold at "less than normal value".[2] The ITC, headed by a six person commission, is responsible for determining whether imports are injuring or threatening to injure a domestic industry producing like products to the imports at issue. These two agencies conduct independent, concurrent investigations, and if both make affirmative determination, the DOC will direct the US Customs Service to impose an anti-dumping duty. In EU, it is the European Commission (EC) which is responsible for investigating complaints and assessing whether they are justified. The Commission can also impose provisional measures, however, it is the Council of Ministers which imposes definitive ADD.

Injury to the domestic industry

The ADD should be levied only where it has been established on the basis of investigations that:

- There has been a significant increase in dumped imports; or
- The prices of such imports have undercut those of the like domestic product, have depressed, suppressed the price of the like product; and

[1] Article IV of the GATT sanctions special duties if an importer could prove that another country was dumping its exports, i.e. selling below cost of production or below home-market value.
[2] The normal value is based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

- As a result injury is caused to the domestic industry or there is a threat of injury to the domestic industry of the importing country.

The ADP specifies that for ADD to be levied, it must be clearly established that there is a causal link between dumped imports and injury to the industry. The causality indicator reflects the coincidence in time between increase of dumped imports and injury suffered by the domestic industry.

Procedural Rules

The application for the levy of ADD will contain evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury.

Once investigations have begun, exporters, importers of the alleged dumped products, and the governments of the exporting countries have adequate opportunity to tender oral and written evidence to rebut the claim made by the domestic industry and to defend their interests. In addition, industrial users and consumers of the product under investigation will be given an opportunity to express their views.

Methodological Rules

The methods used by the investigating authority to calculate the margin of dumping can greatly influence the level of ADD to be paid.

Price comparison. A product is considered dumped only if the foreign producer's export price[3] is lower than the price charged for home consumption in the country of export. The margin of dumping is determined primarily by comparing these two prices. Such comparison should be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. The average ex-factory price of sales can be calculated for the same product or a similar product in the home market during a specified period. Adjustments[4]

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[3] The export price is the price actually paid or payable for the product concerned when sold in the importing country market.

[4] A fair comparison has to be made between the export price and the normal value. Due allowances have to be made in each case, on its merits, for differences which affect price comparability, including differences in physical differences, import charges and indirect taxes, discounts, rebates and quantities, level of trade, transport, insurance, handling, loading and ancillary costs, packing, credit, after-sales costs, commissions and currency conversions.

are made to calculate foreign market value. These adjustments include the following items:

- Removal of all movement expenses from the invoice price.
- Differences in direct selling expenses between the home and foreign markets.
- Any difference in packing between home market sales and those shipped to another country.
- In the case of similar products, the direct costs of physical differences between the product sold in the foreign market and its counterpart in the home market.

Cost of production. In making a price comparison, the question often arises of what benchmark to use in determining the price for home consumption when the producer is selling in the home market at prices below average production cost or at a loss. This evaluation is usually made only if the petitioner alleges sales below cost of production.[5] If such an allegation is accepted, then the actual full cost of production (COP) must be calculated for each product sold in the home market or third country market. The COP is the full cost of production including:

- Actual cost of manufacture;[6] and
- Allocation of selling, general and administrative and financial expenses (SGA&F) of the alleged company.

Constructed value. When the volume of domestic sales is "low" the consumption price in the exporting country may not provide a proper basis for price comparison. In such cases, for price comparison purposes, a constructed value[7] (CV) is used instead of the domestic consumption price. The constructed value is calculated on the basis of cost to the exporting industry of producing the product.

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[5] Cost of production includes cost of manufacturing and selling, general and administrative expenses. Financing costs are part of the SG&A expenses.
[6] Cost of manufacturing consists of cost of materials, cost of direct labour and manufacturing overheads.
[7] Constructed value is calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits incurred on the domestic market of the country of origin.

Constructed value is essentially a cost-based calculation of what the home market price of a product would be if it were sold in that market at a normal or fair price. Constructed value is calculated based on the actual cost of manufacturing (COM) of the product, allocation of SGA&F expenses, and a profit factor. Although rules for calculating CV are very similar to those for COP; there are three major differences:

- Costs of inputs purchased from related parties are treated differently in CV;
- SGA&F expenses must be at least 10 percent of COM for the product; and
- Profit must be at least 8 percent of COM plus SGA&F expenses for the product.

De minimis Rule

The ADP Agreement provides that the application should be immediately rejected and the investigation terminated if:

- The margin of dumping is *de minimis*, i.e. less than 2 per cent, expressed as a percentage of the export price; or
- The volume of imports from a particular country is less than 3 per cent of all imports of like products into the importing country; or
- The injury is negligible.

Provisional/Definitive Measures

The ADP Agreement authorises provisional measures to be taken when the investigating authorities judge that such measures are "necessary to prevent injury being caused during the investigation". They must not exceed the *dumping margin* and have to be set at a lower level if that would be enough to remove the injury. Provisional duties are normally valid for six months and may be extended for a further three months. When they are imposed, importers must lodge security (in the form of cash deposit or bonds) for payment of the duties when importing the goods. For example, if the dumping margin is 15 per cent, and the value of imported steel covered by an anti-dumping order is $ 500/MT the importer would have to deposit $ 75/MT at the time of entry in order to continue to import steel.

Disclosure Prior to Final Determination

The Agreement stipulates that the investigations should be completed within a period of one year, and in no case more than 18 months after its initiation. If a definitive decision is made to levy duty, the investigating authorities are required to "disclose" to the interested parties (exporter or producers under investigation, their governments and importers) the essential facts on which the decision to apply the duty is made.

Sunset Clause

Definitive duties are valid for five years. They will then expire, unless a review of the case determines that, in the absence of such measures, dumping and injury will continue or recur. Reviews for this purpose must be initiated before the sunset date and should normally be concluded within one year.

Price Undertaking

Exporters can avoid ADD by undertaking to increase their export prices. However, no exporter shall be forced to enter into such undertakings. The Agreement permits such price undertaking only after the investigating authorities have made *preliminary affirmative determination* of injury to the domestic industry and of dumping. It is a definitive anti-dumping measure, if it is violated or withdrawn, definitive duties can be imposed immediately.

Dumping Margins

The dumping margin is the difference between the export price and the normal value, the price charged in the exporter's home market. The prices in the respective markets are adjusted to exclude selling expenses, physical differences, import charges, discounts, rebates, transport, insurance charges, packing and currency conversions, etc. in order to arrive at comparable ex-factory gate prices. The adjusted export price is then compared to the adjusted normal value to determine the margin of dumping.

The investigating authorities perform this calculation on a sale-specific basis, it calculates a weighted-average margin, based on the comparison of the weighted average normal value with weighted average export price.

ADD should be determined separately for each exporter or producer, the amounts of duties payable could therefore vary according to the dumping margin determined for each exporter. When the number of exporters or producers is so large as to make the calculation of an individual dumping margin impracticable, however, the investigating authorities may determine duties on the basis of *statistically valid* samples.

Anti-Dumping "Inhibiting Competition"

Anti-dumping measures may be justified if foreigners are guilty of predatory pricing and even if they are guilty, anti-dumping is the wrong response. In any case, consumers gain from lower prices, so do the importing companies and users who can buy their supply cheaply. Alan Greenspan, US Fed Reserve Board Chairman, recently pointed out: "While these forms of production have often been imposed under the label of promoting *fair trade*, often-times they are a simple guise of inhibiting competition."

Direct and Hidden Costs of Anti-Dumping

Dumping calculations are a sham. Foreigners are almost always found at fault. For example, the ITC rarely makes a negative finding in its preliminary determination - the standard is very low. And the short deadline means that there is little time available for exporters/producers and importers (of the product at issue) to assemble the information necessary to present a strong case. The figures can easily be manipulated to show dumping because it is so hard to make sensible comparisons across borders. To prove injury, it is enough for domestic firms merely to show that sales are being hit by rising imports. Between 1980 and 1997, 71 per cent of anti-dumping claims in the EU did indeed succeed, as did 80 per cent of those in America.

The anti-dumping procedure is quite expensive, both in direct cost and the lost sales, worse still are the hidden costs of anti-dumping. The most damaging aspect is the inconvenience imposed on the manufacturers. This results in a big loss of time that could be better spent in a productive manner, rather than responding to the complicated questionnaires sent by the investigating authorities which is quite burdensome and time-consuming.

There are huge indirect costs. Even unsuccessful dumping cases are a tax on trade. They typically engage firms for over a year and impose huge legal costs. In effect anti-dumping measures encourage domestic and foreign producers to collude to raise prices at consumers' expense. For

example, the textile industry in EU is simply not in a position to compete with cheaper imports from Asia. Europe has now reached a crossroads where it has to decide whether it wants to protect its consumer or its industry. As far as textiles are concerned, both cannot be protected. Pattrick Messerlin, a French economist, estimates that because of this pro-cartel effect, anti-dumping duties are generally twice as costly to the economy as equivalent import tariffs. According to Messerlin, only 3 per cent of anti-dumping cases in the EU and 4 per cent in the US might involve predatory pricing.

Anti-Dumping/Safeguard Measures

The WTO rules permit countries to take safeguard actions restricting imports for temporary periods when, as a result of a sudden and sharp increase in imports, serious injury is caused to the domestic industry of the importing country. Similar principles apply when countries take anti-dumping measures to restrict imports in order to assist a domestic industry. The standard of "injury" to the industry that must be established to justify safeguard actions is, however, much higher than that required for the levy of ADD. In the case of safeguard actions, injury to the industry must be "serious"; in the case of ADD, a lower standard of proof of material injury is adequate. That makes ADD more attractive to developed countries. The WTO rules allow countries to use "safeguard" measures for temporary protection against import surges, but the countries nearly always resort to anti-dumping instead, which suggests that their real aim is to bring back protection by the back door.

Forced Dumping

In one sense, "dumping" is common. Since firms often charge less in more competitive foreign markets than they do at home. It is fairly normal for businesses to sell below cost for some time to establish their position in a market that can initially be entered through fierce price competition. In the short run, there is incentive for the firms to keep production going if losses can be minimised in the hope that market conditions will improve. The actual duration of this short-run can vary depending upon the sector. Moreover, agro-based industries require special treatment as weather plays a central role in these industries. If the weather is bad, the cotton crop yield is low and the firms under these circumstances are forced to sell below cost of production for some time. Due allowance should be given to this fact.

Repeated Anti-Dumping Charges

Developing countries are worried about the repeated anti-dumping charges against the same product. It is noteworthy that new investigations are initiated against the same product almost immediately after the conclusion of an earlier investigation. Often new cases are filed as soon as old ones have been rejected - on the basis that eventually, one will succeed. In this context, anti-dumping rules need to be improved and made more rigorous, under which the burden of proof of dumping should be placed entirely on the country, initiating such charges.

III. Anti-Dumping Measures against Pakistan

In the 1990s, Pakistan's exports especially textiles and clothing have been subjected to ADD in a number of countries such as Japan and the European Union. This new wave of anti-dumping cases is particularly alarming for Pakistan because Pakistani textile products from yarn to grey fabric and made-ups have been subjected to ADD.

Yarn

In 1995, Japanese Spinners Association levied ADD on cotton yarn of 20/21 counts imported from Pakistan claiming that these imports were causing material injury to the spinning industry of Japan. Japan, the biggest market for Pakistan's cotton yarn, levied 9.9 per cent ADD on Pakistan's yarn in 1996. This was a big blow to Pakistan's textile industry as 24 per cent of total exports of yarn goes to Japan. About 70 per cent of the total requirements of Japan's towel industry have traditionally been met by Pakistan's yarn. The export of Pakistani cotton yarn to Japan has declined by $ 67 million over 1998-99.

Initially, the proposal was to collect samples of 21 companies instead of 188 companies against whom the notices were issued. Provisional ADD was imposed in April 1997. Table-1 displays the names of some of the targeted firms against their dumping margins.

The investigation process by the Japanese team was slow and lengthy. The response of both Pakistan's government and textiles industry was slow and erratic to Japan's anti-dumping initiation. It has been observed that Pakistan lacks expertise to defend dumping cases. The reason Pakistan could not defend Japanese allegation was the hiring of an unsuitable attorney from Australia.

Table-1: Anti-Dumping Duties on Yarn (Japan)

Firm	Provisional Duty
Ahmed Fine Tex Mills	9.9
Ellcot Spinning Mills	9.9
Eastern Spinning Mills	9.9
Gulistan Tex Mills	9.9
North Star Tex Mills	0.9
Muhammad Farooq Tex Mills	3.9
Umer Fabrics	9.9
Nageena Cotton Mills	9.9

Source: *Pakistan Textile Journal*, May 1997.

Another setback to cotton yarn export was erected by the United States. Unlike other importing countries instead of slapping ADD, the US gave a call for consultation in category 301 (Combed Cotton Yarn) in April 1997. Pakistan is the largest exporter of yarn to the USA excluding the NAFTA countries, Canada and Mexico.

The US government has imposed a restraint on the export of combined cotton yarn (Category 301) from Pakistan in March 1999, under safeguard clause of the Agreement of Textiles and Clothing (ATC). Pakistan appealed to the Textile Monitoring Body (TMB) against this US action. Though less protectionist than the EU, America is losing its way. TMB had recommended twice in favour of Pakistan, first in April and second in June 1999, but the US government has refused to comply with the TMB recommendation. Now Pakistan is considering contesting its case at the Dispute Settlement Board (DSB) of the WTO.

Bed-Linen

The European Commission (EC) has imposed definitive ADD on Pakistani bed-linen with effect from December 5, 1997. Pakistan, which is the largest exporter of bed-linen to the EU, will face lower duties of around 6.4 percent while Egypt will attract duties of around 13 percent and India would be subject to around 12 percent dumping duties. For non-cooperating companies, 24.7 per cent duties have been slapped on Indian firms and 6.7 per cent on Pakistani firms.

The ADD on Pakistan and its competitors were imposed on the charges of dumping cheap cotton fabrics and bed-linen onto the markets of the EU. The complaint was lodged by Eurocotton, an association of textile manufacturers in the EU. Eurocotton has demanded the imposition of very high ADD on bed-linen imported from Pakistan (32 per cent), India (27 per cent) and Egypt (38 per cent).

The period of investigation was from July 1, 1995 to June 30, 1996. The provisional ADD on bedwear were imposed by the EC in June 1997 (see Table-2).

Table-2: Anti-Dumping Duties on Bed-Linen

Firm	Initial Jun 1997	Provisional Oct 1997	Definitive Dec 1997
Farooq Textile Mills	6.6	2.9	1.8
Al-Karam Textile Mills	2.6	Nil	1.3
Al-Abid Textile Mills	8.2	8.2	6.7
Fateh Textile Mills	7.9	7.9	6.3
Gul Ahmed Textile Mills*	-	-	0.1
Excel Textile Mills	-	-	0.1

Source: *The News*, various issues.

*Gul Ahmed Textile Mills had been exempted as dumping charges on this firm could not be substantiated by the investigating team from the EC.

The scope of investigations covers bed-linen of cotton, pure or blended with man-made fibres, bleached, dyed or printed. Bed-linen comprises bed sheets, duvet covers and pillow cases, packaged for sale either separately or in sets. There are about 160 Pakistani exporters belonging to 5 different textile associations (see Table-3) which export bed-linen to the EU and fetch more than US $ 180 million per annum. The export of bed-linen falls under quota administration.

Table-3: Associations of Bed-Linen

Export of Bed-Linen to EU (1995)	
Association	**Percent Share**
APTMA	13.4
PBEA	24.3
APMUMA	26.7
PCMA	15.1
APCEA	20.5

Source: APTMA

EU says there has been injury to the domestic industry. Pakistan says there are already quota restraints then why were ADD imposed on bed-linen? The answer is fairly simple. French politicians promised further restraints on imports of grey fabrics to the French textile industry. And they made a prestige issue out of it. Though nine EU nations voted against the levy, the French were simply not willing to give up. Anti-dumping on bed-linen was perhaps offered to pacify the French. There has been sharp pressure from France and other countries such as Italy and Portugal for the imposition of the duties.

According to exporters of bed-linen, by accepting a second complaint from Eurocotton within two months after withdrawal of anti-dumping proceedings against the import of bed-linen from Pakistan, the EC gave the impression of cooperating with the complainant. The Pakistan delegation adhered to the following major points in order to challenge the validity of the complaint:

- Pakistani exports of bed-linen (Category 20) are subject to a quota restriction. Being a quota item, Pakistani manufacturers could not flood the EU market. There is also no incentive to lower prices as there is only a fixed amount of product allowed into the EU under the quota system.

- Eurocotton, which lodged the complaint, did not represent at least 25 percent of the trade.

- Pakistan catered to the lower end of the market, while the European producers served the upper end. Therefore, injury to community industry could not have occurred, as their products are not similar products - hence they cannot be compared.

- During the last few years the producers in the EU textiles industry have introduced automation which could have resulted in an increase in cost of production and possible workers layoff. For this the exporting countries such as Pakistan cannot be blamed.

Unbleached Cotton Fabrics

The exports of Unbleached Cotton Fabric (UCF) contributes significantly to the total exports of Pakistan, especially the EU. The value of UCF exported to the EU countries amounts to about $ 106 million per year and comprise 14 percent of the total textile quota of Pakistan. This product has been subjected to anti-dumping proceedings time and again during the period 1994 to 1998 by the EU.

Unbleached cotton fabric is a raw material for the textile finishing industry, which transforms it into bleached, dyed and printed fabrics used to make clothes and home furnishings. France, Italy, Spain and Portugal eager to protect the EU's own weaving industry were leading backers of the dumping duties. They wanted to block the relatively cheaper grey cloth from Asia, from entering their markets. It would appear to be clearly in the interest of certain community upstream industries, in particular yarn producers, to preserve the community weaving industry, which is an indispensable part of the European textiles sector. The existence of this sector is clearly threatened by the Asian countries that have a certain cost advantage over their counterparts in the European Union.

In January 1994, a complaint was lodged by the Cotton and Allied Textile Industries of the EC (Eurocotton) to initiate anti-dumping proceedings against imports of UCF originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey. The complaint was withdrawn by Eurocotton due to insufficient evidence, therefore the Commission decided to terminate the proceedings in January 1996.

On February 21, 1996, the Commission announced the initiation of an anti-dumping proceeding with regard to the imports into the community of UCF originating in China, India, Indonesia, Egypt, Pakistan and Turkey. The proceeding was initiated for the second time as a result of a complaint lodged on January 8, 1996, by Eurocotton, on behalf of the community industry.

European Commission's Investigation of UCF

Injury to the Community Industry

The findings of the Commission, based on a sample of community producers during the investigation period (1992 to 1995) were as follows:

- Total sales of domestically produced UCF fell by 11.8 per cent, while consumption of the product concerned rose by 12.9 per cent over the investigation period.
- Market share of the community producers fell by 14 per cent, while production of the product concerned decreased by 9.7 per cent.
- It was estimated that 88 plants manufacturing the product had been closed. This resulted in 8,625 job losses in the community industry.
- The investigation of the community producers showed as the main injury indicators:
  - Unsatisfactory development of sales prices.
  - Deterioration of profitability over the period 1992 to 1995.

It was established that at the same time the dumped imports were sold in the community at prices which significantly undercut the prices of the community producers. The results of the comparison showed margins of price undercutting for all the producers investigated in the exporting countries (see Table-4).

Table-4: Price Undercutting Margins Established by EC

Country	Margin
China	17.5%
Egypt	20.0%
India	34.5%
Indonesia	25.7%
Pakistan	24.7%
Turkey	30.4%

Source: *Official Journal of the European Communities* (November 18, 1996), Commission Regulation (EC) No. 2208/96.

Effects of Other Factors

Imports from third countries. It was alleged by certain exporters that imports from other third countries not included in this proceeding were the cause of any injury suffered by the community producers. The market share of these imports increased from 26.4 per cent in 1992 to 31.6 per cent in 1995. The market share of Russia, for example increased from 1.3 per cent to 3.1 per cent. The market share of imports from UAE rose from 0.2 per cent to 2.4 per cent. The Commission, however, has no indication that imports from Russia and the UAE are entering the community at dumped prices.

Increase in raw cotton prices. Average raw cotton rose worldwide from ECU 1.17/kg in 1992 to ECU 1.86/kg in 1995, a rise of 59 per cent. The Commission, however, concluded that it was not the rise in the raw cotton price in isolation that caused the material injury suffered by the community industry. The Commission considered the price suppression brought about by the price undercutting of the dumped import from the exporting countries, that prevented the community industry from reacting fully to the rising cotton prices.

Sampling

In view of the large number of exporters in the countries concerned, the Commission decided to apply sampling techniques, and divided the exporters into three categories: participants, cooperating companies and non-cooperating companies. In the case of Pakistan only four companies were selected in the sample, another 160 exporters cooperated with the investigation team. The four participant firms were:

- Lucky Textile Mills, Karachi
- Diamond Fabrics Limited, Sheikhupura
- Nishat Mills Limited, Faisalabad
- Kohinoor Raiwind Mills Limited, Lahore

Normal Value

Domestic sales were considered representative when the total domestic sales volume of each producing company was equal to at least 5 per cent of its total export sales volume to the community. Normal value was constructed by the Commission:

Manufacturing Cost + SG&A Expenses + Reasonable Profit

Export Price

In all cases where exports of grey cotton fabric were made to independent customers in the community, the export price was established. On the basis of export prices actually paid or payable, the Pakistani exporter claimed that, in establishing the date of sale, the date of contract should be used rather than the date of the invoice. This was rejected on the grounds that it is in the Commission's normal practice to use the date of invoice as the date of sale.

Comparison

For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability. Pakistan requested an allowance for import charges, which was rejected by the Commission as irrelevant considering that the duty was not included in the costs of raw material used for the calculation of constructed normal value.

Dumping Margins

The Commission established that a comparison between a weighted average normal value and a weighted average of the export prices of all the transactions to the community did not reflect the full degree of dumping being practised. Therefore, export prices had to be compared on a transaction-by-transaction basis to weighted average normal values.

The general rule regarding group companies was applied to calculate the dumping margin for Pakistani companies forming part of the same group. The comparison between normal value and export price showed the existence of dumping in respect of all the Pakistani companies in the sample. The provisional dumping margins expressed a percentage of the cif import price at the community border (see Table-5).

Table-5: Provisional ADD on Unbleached Cotton Fabrics

Company	Provisional
Diamond Fabrics	22.3%
Amer Fabrics Limited	22.3%
Kohinoor Raiwind Mills Limited	30.3%
Kohinoor Weaving Mills Limited	30.3%
Lucky Textile Mills	30.6%
Nishat Mills Limited	22.8%
Nishat Fabrics Limited	22.8%

Source: *Official Journal of European Communities*, Commission Regulation No. (EC) 2208/96 (November 1996).

Cooperating companies not in the sample were given the average dumping margin of the sample, weighted on the basis of export turnover to the community. Expressed as a percentage of the cif import price at the community border, the margin was 27.8 per cent.

For non-cooperating companies, the provisional dumping margin had to be assessed on the basis of the information available. Expressed as a percentage of the cif import price at the community border, the margin was 32.5 per cent.

In March 1997, the Commission proposed definitive dumping margins on imports of UCF from Pakistan (and five other countries) ranging from a minimum 9 per cent to a maximum 22.9 per cent (see Tables-6 and 7). In May 1997, six months after the imposition of provisional ADD (November 1996), the Council of European Union decided not to impose definitive ADD.

Table-6: Anti-Dumping Duties on Unbleached Cotton Fabrics

Company	Provisional	Proposed Definitive
Diamond	22.3	9.0
Amer	22.3	9.0
Kohinoor	30.3	22.9
Kohinoor	30.3	22.9
Lucky	30.6	16.9
Nishat	17.0	9.2
Nishat	17.0	9.2

Source: Morning Brief, March 1997.

For the third time in July 1997, Eurocotton again asked the Commission to extend the investigation in view of imposing ADD against imports of UCF, originating in the same six countries. One thing is clear that this matter is essentially a political issue. Therefore, improved presentations and strong arguments could achieve very little. Once again investigation started and provisional duties were imposed in April 1998 followed by proposed definitive ADD in July 1998.

Table-7: ADD Imposed on Cooperating and Non-Cooperating Companies

Company	Provisional	Proposed Definitive
Cooperating	27.9%	14.2%
Non-Cooperating	32.6%	22.9%

Source: Morning Brief, March 1997.

Exporters/producers of the targeted countries sent a rebuttal against the findings of the European Commission both orally and in writing. The Commission sent its recommendations to the Council of Ministers. The case was voted out in October 1998 by the Council of Ministers. The Council confirmed there was no majority in favour of the proposal for five-year ADD averaging 12 percent on UCF imports from China, India, Indonesia, Egypt and Pakistan. As a result the Commission finally had to withdraw its decision of imposing definitive ADD against these five countries.

IV. Conclusion and Policy Directions

Preventive Measures

The likelihood of developed countries imposing anti-dumping duties on Pakistan's exports in the future is quite high. Pakistan, therefore, should strengthen its technical, legal and institutional set-up to fully prepare for the prospective anti-dumping charges on Pakistan's exports. It is not too early to begin taking preventive measures to minimise the potential ADD, so waiting until an investigation is initiated would not be a wise policy to follow.

An understanding of the complex rules on the levy of ADD could enable exporting firms to take precautionary steps to avoid anti-dumping actions in foreign importing markets where there are increasing pressures from industrial and other vested interest groups for such actions. Since dumping margins are determined on the basis of the margins between the price charged in the domestic market and its export price.

While an exporting enterprise may continue to charge export prices that are lower than its domestic prices, it should avoid to do so in markets where anti-dumping actions are possible. In such markets anti-dumping measures can be avoided if the exporter does not allow the difference between its domestic price and export price to fall below a reasonable margin. If the margin is ***de minimus*** investigating authorities have to reject application for the levy of duties.

Database

Once the investigations begin, the exporters/producers of the exporting countries have to provide information on the cost of production and other matters on the basis of a questionnaire sent by the investigating authorities. It is essential for exporters to cooperate with these authorities and to give them the required information. To prepare beforehand, developing separate databases for importing countries' market and home market sales could be extremely helpful. Having an organised database that provides full information concerning the calculation of the export price, normal value and constructed normal value could also reduce the possibility that the investigating authorities will reject a company's data. Thus, producers/ exporters should identify (a) major costs of production, (b) important selling expenses and (c) significant adjustments for their product.

Anti-Dumping Law of Pakistan

After a series of anti-dumping charges on Pakistan's exports, the exporters have been demanding the introduction of an ADD law in Pakistan to neutralise the situation. Although Pakistan's legislation authorises anti-dumping or countervailing duties, no such measures have ever been imposed. In fact the ADD law in its present form is neither complete nor WTO consistent. The full implementation of the present tariff reform and trade liberalisation programme is likely to expose a number of domestic producers to external competition; this may bring an increased number of applications for anti-dumping. In our view, there is an immediate need to have an effective anti-dumping law in force and an equally competent machinery to enforce it. A draft of Anti-Dumping and Countervailing Duties Act, 1998, has been prepared by the National Tariff Commission and has been submitted to the National Assembly of the previous government.

To implement the law effectively both the businesses and the concerned officials must be thoroughly trained to make an anti-dumping case. The purpose of the law must not be tit for tat retaliation. The main purpose must be to use it to protect the local industry, once our markets are exposed to severe foreign competition.

Competition Policy

Competition policy may be on the agenda for the upcoming WTO meeting in Seattle, which could launch a new round of trade talks. In a study, the OECD has identified areas where competition policy supports or undermines trade policy and areas where trade policy supports or undermines competition policy. After the Singapore Ministerial, Japan wanted talks on competition policy to include anti-dumping or special tariffs. As frequent practitioners of anti-dumping measures, however, the EU and US opposed the idea. A further improvement would be to write anti-trust rules into world trade law.

Role of Government

As the legal and other costs of participating in anti-dumping investigations are substantial, and are often beyond the resources of small and medium-sized enterprises, they rely on their governments to defend their interests. In the future, the Government of Pakistan should play a more dynamic role during anti-dumping investigations to help exporters and their associations. The Government of Pakistan should support the proposal submitted at the WTO which proposes modifications of rules, such that the dispute settlement panels follow the common rules provided by the Dispute

Settlement Understanding. Currently, there exist special provisions in the agreement relating to settlement of disputes in the anti-dumping area.

The Agreement of ADP unfairly restricts the role of the dispute settlement panel. The ADP excludes anti-dumping cases from the normal dispute settlement panel. In dispute on all other subjects, the panels are empowered to determine whether the country has violated its obligations under the Agreement. This authority has been denied to the panels in anti-dumping cases. These selective methods and the discretion they provide to those initiating the anti-dumping cases need to be reformed. Without these reforms, WTO will fail to function independently as a neutral body in determining the veracity of anti-dumping claims.

The developing nations must bury their trade differences and thrash out a common stance on ADD ahead of the upcoming WTO meeting in Seattle. It is time for the world to dump anti-dumping, a huge impediment to future export growth in developing countries in general and Pakistan in particular.

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