

Dispute Settlement in the WTO and the Least Developed Countries: the Case of India's Anti-Dumping Duties on Lead Acid Battery Import from Bangladesh

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Trade between nations is being increasingly conducted under rules and agreements negotiated at the World Trade Organization (WTO). The growing importance of WTO in the conduct of orderly trade has reduced the compulsion of bilateral negotiations to resolve contentious trade issues, in particular trade disputes. Many of these can now be resolved through the various mechanisms set up by WTO. This may have some advantages for the smaller and weaker nations, in particular the least developed countries (LLDC), which find themselves in a highly unequal position in trade negotiations with larger and more powerful nations. Such a country can hardly expect to get a fair deal in bilateral negotiations with powerful developed nations to solve trade related disputes. Even without any explicit threat or arm-twisting, the negotiations are likely to move toward the desired outcome of the more powerful nations because of their greater economic and political leverage. The dispute settlement mechanism of WTO that requires the involvement of experts from several countries other than the disputants (beyond the consultation stage) may offer an opportunity to level the playing field to some extent.

Recently Bangladesh, an LDC, became embroiled in a trade dispute with its powerful neighbour India. This paper traces the events and circumstances that led to the imposition of anti-dumping duties by India on lead acid batteries imported from Bangladesh, an LDC that has encountered significant difficulties in diversifying its economy and export trade, especially as regards

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manufactured goods which were the target in this case. It explains the problems and obstacles that Bangladesh had to overcome in order to initiate a challenge in the WTO. The important roles played by the Advisory Centre on WTO Law in Geneva and the concerned private company are also discussed. Finally, it considers the implications of Bangladesh's successful challenge against a powerful trade partner for the participation of the least developed countries in the dispute settlement processes of the WTO.

This paper shows that notwithstanding the potential advantages of using the WTO dispute settlement mechanism it is not easy for the LDCs to seek redress at the WTO from unfair trade impositions of powerful countries. Various internal constraints that commonly plague LDCs (such as a lack of adequate litigation capacity) make it difficult to bring trade disputes to the WTO. So far three countries, viz. USA (February 1992), Brazil (September 1992) and India (January 2002), had imposed anti-dumping measures against some of its export products. These measures resulted in the cessation of the export of the concerned products to these countries. Bangladesh was not able to mount a challenge to the anti-dumping measures on shop towels imposed by the USA during the thirteen years these were in effect.¹ It has also not been able to make an attempt to remove the Brazilian anti-dumping duties on jute bags.² Cost considerations, capacity constraints and problems with decision-making at both industry and government levels combined to erect formidable barriers to taking appropriate steps to remove these 'unfair' trade barriers.³ However, a confluence of some positive factors permitted the Bangladeshi authorities to successfully challenge before the WTO dispute settlement system the anti-dumping duties imposed on its battery export by India.⁴

¹ USA revoked the anti-dumping duties on shop towels with effect from 17 February 2005 since no domestic interested parties participated in the review. See *Federal Register*, Vol 70, No. 68, April 11, 2005, Notices.

² Brazil conducted sunset reviews of the anti-dumping measures in September 1998 and September 2004. On both occasions the final decision was to continue with the measures. The Brazilian anti-dumping case is also an interesting example of how what might be construed as a minor problem in a developed country can become a major constraint in an LDC. Brazil supplied all legal papers in relation to the anti-dumping case in Portuguese only. It took many months for the authorities in Bangladesh to have these deciphered.

³ The same problems also prevent the imposition of anti-dumping measures to offset alleged dumping by foreign exporters in the domestic market.

⁴ India – Anti-Dumping Measure On Batteries From Bangladesh, WT/DS306, available at <http://docsonline.wto.org>

Trade Relations between Bangladesh and India

India is the single largest source of imports into Bangladesh. Trade liberalization policies of the early nineties witnessed a more than six-fold increase in imports from \$181 to \$1100 million in only 5 years as shown in Table 1. Imports increased further to more than two billion dollars in 2004-05. Moreover, it is widely believed that informal imports from India are about the same in value as formal imports. Thus, imports from India account for about one-quarter of the total imports of Bangladesh. Although trade liberalization policies of Bangladesh did result in massive increase (more than eleven-fold) in imports from India, there was a relatively small impact of India's trade liberalization policies on exports from Bangladesh to India.⁵ Its export increased from \$31 million to \$144 million (less than five-fold) during the 1990-91 and 2004-05 period. Thus, while India increased its formal export to Bangladesh during this period by about \$1.9 billion, Bangladesh increased its export to India by only \$113 million. Consequently, a very large deficit developed in the nation's trade balance with India. This has been the cause of much concern in Bangladesh, and the trade relations between the two have been somewhat tense.

Many economists, especially those on the Indian side, claim that the trade pattern between Bangladesh and India is the natural manifestation of comparative advantage – India produces goods that Bangladesh demands, but not many Bangladeshi goods can be sold competitively in the Indian market. Business people in Bangladesh on the other hand maintain that the low volume of exports from Bangladesh to India is actually the outcome of deliberate Indian policies and administrative measures. Bangladeshi exporters face significant non-tariff barriers such as stringent standard

Table 1: Trade between Bangladesh and India

(million US\$)

Fiscal year	Export	Import
1990-91	31	181
1991-92	2	231
1992-93	8	342

⁵ It is believed that there is a similar imbalance in the informal trade balance, too.

1993-94	21	395
1994-95	29	689
1995-96	24	1100
1996-97	28	922
1997-98	50	928
1998-99	48	1306
1999-00	59	833
2000-01	57	1184
2001-02	44	1019
2002-03	84	1358
2003-04	89	1602
2004-05	144	2030

Source: Bangladesh Bank and Export Promotion Bureau.

requirements and delays that effectively close off the Indian market to exportable products of Bangladesh.⁶ There is merit in the arguments of both sides. While it is true that India is the most competitive supplier of many of the import products of Bangladesh, it is also true that exports of Bangladesh could be considerably higher if they had not faced significant non-tariff barriers raised by India.

Battery Export and Non-Tariff Barriers

A good example of non-tariff barriers discouraging imports from Bangladesh is provided by the hurdles faced by the Indian importers of lead acid batteries from Bangladesh. Batteries were first exported to India in 1996 under India's Special Import Licence as India still maintained licensing

⁶ Technical standards and testing requirements, banking regulations and delays and harassment by custom officials are frequently mentioned as examples of these barriers.

requirements for imports.⁷ Soon after, the authorities in India served a legal notice on them asking to show cause why the imports of automotive batteries from Bangladesh should not be declared illegal. Simultaneously, a major Indian battery manufacturer Exide India Limited lodged a case against the exporter of battery from Bangladesh Rahimafrooz alleging illegal use of a trademark (which Exide eventually lost). The custom authorities also harassed the importers of batteries from Bangladesh to an extent that such imports ceased altogether. Battery exports resumed only after it was put under the Open General License in 1998 and included in the list of products that were to receive concessional tariff treatment under the South Asia Preferential Trade Arrangement (SAPTA).⁸

While the business community of Bangladesh frequently complained about non-tariff barriers faced by their export to India, the actual nature of these barriers were not fully known or understood. Bangladesh Tariff Commission (BTC), a statutory Commission established in 1992 to advise the government on the protection and the promotion of domestic industries, undertook to investigate the matter. In collaboration with the apex chambers of commerce and industry of the country (viz. FBCCI, DCCI, MCCI etc) it prepared a list of the non-tariff barriers that hindered exports of Bangladeshi products to India. These ranged from stringent Sanitary and Phytosanitary (SPS) measures and technical standards to more mundane banking practices and official procedures. Although the Indian side readily agreed to remove any unreasonable trade barriers, not much was done to ease the barriers to the flow of export products from Bangladesh to India.

Export Trade of Bangladesh

Trade relations between the two countries were not helped by the imposition of an anti-dumping duty by India on the imports of lead acid battery from Bangladesh. Bangladesh has a very limited range of products in its export basket, and as shown in Table 2 below, it is dominated by a single item, ready made garments (RMG), which accounts for about 76 per cent of the total exports. Another three items, frozen food, leather and leather products and jute and jute goods, contribute 12 per cent. The need for diversifying the export basket to ensure a more balanced growth of trade has

⁷ This paragraph is based on information provided in Hoque (2003).

⁸ SAPTA is a preferential trade agreement among the member nations of South Asian Association for Regional Cooperation (SAARC). Members of SAARC are Bangladesh, Bhutan, Maldives, Nepal, India, Pakistan and Sri Lanka. The first four are classified as least developed countries.

been emphasized by both national and overseas experts. Government, business community and the donor agencies have worked together to broaden the range of exports; but it has proved to be a difficult task. Indeed, the importance of RMG in total exports has increased steadily over the last several years such that Bangladesh has one of the highest export concentrations in the world.

Table 2: Major Export Products of Bangladesh

(US\$ million)

Export products	1993-94	2003-04
Jute and Jute goods	341	326
Frozen food	211	390
Leather and leather goods	168	211
Ready made Garments:	1556	5686
Woven garments	1292	3538
Knitwear	264	2148
Total export	2534	7603

Source: Export Promotion Bureau

In this situation, the addition of any new product to the export basket is a cherished event, especially if it is a manufactured product, and the government would like to see that such products do not encounter undue hindrances in gaining access to overseas markets. Bangladesh has been frustrated by the continued use of non-tariff barriers by India to obstruct its exports. The ballooning of the trade deficit with India to nearly two billion dollars has raised serious concerns on the Bangladeshi side about the longer term consequences of such large deficits every year with India and also about India's trade intentions.

The imposition of Anti-dumping duty on lead acid battery, a very minor export item, was thus viewed as an attempt to hinder prospective export products from Bangladesh from gaining a foothold in the Indian market. The anti-dumping measure received much adverse publicity in the local media and was held up (with good effect) as a glaring example of India's implacable animosity toward Bangladesh exporters. It served to further stoke the suspicion of Bangladesh about Indian obstructionist intentions.

The anti-dumping duties raised some difficult problems for the Government of Bangladesh. The extensive adverse publicity it received in the news media in Bangladesh and the near-unanimity of views that the anti-dumping duties were meant to prevent export of batteries from Bangladesh created some difficult political problems and mounted considerable pressure on the Government to act. However, it had no experience of formally contesting anti-dumping duties either in the imposing country or at the WTO. The cost of litigation was a serious disincentive, as was the presumed implications of confronting such a large neighbour and trade partner head-on at the WTO. However, a confluence of several positive factors and much internal debate finally led to the decision to contest the legality of India's anti-dumping duties in the dispute settlement body of the WTO. It turned out to be a groundbreaking decision that would have important implications not only for Bangladesh but also potentially for LDC participation in the WTO dispute settlement mechanism in the future.

Trade Dispute with India: Allegation of Dumping Batteries

The export of lead acid battery from Bangladesh to India resumed after India agreed during the third round of negotiations under SAPTA to include HS8507 commodities in the list of products originating from LDC member countries of SAARC to be given preferential tariff treatment.⁹ The MFN tariff rate on lead acid batteries was 40 per cent (Table 3). This high tariff rate made any imports from Bangladesh uncompetitive in the Indian market. The tariff concession given under SAPTA reduced the applicable tariff on lead acid batteries from Bangladesh to 16 per cent, which allowed a leading battery manufacturer of Bangladesh Rahimafrooz to export small quantities of lead acid batteries to India. As shown in Table 4, it exported slightly over half a million dollar worth of batteries to India in 1998-99. Its exports nearly doubled the next year to more than a million dollar, and increased further to about 1.3 million dollars in 2000-01, the year when dumping investigation was initiated. The investigation and the subsequent anti-dumping duties totally stopped export of lead acid batteries to India.

⁹ HS8507 includes electric accumulators including separators. The Harmonized System of Commodity Coding and Classification System (HS) was established by the World Custom Organization. HS is an international standard for classification of traded goods at a six-digit level of detail. Members of SAARC are Bangladesh, Bhutan, Maldives, Nepal, India, Pakistan and Sri Lanka. The first four are classified as least developed countries.

Table 3: Tariff Concessions given by India on Lead Acid Battery Import under SAPTA (3rd Round)

HS Code	Basic Tariff Rate	Tariff Concession under SAPTA		Effective Tariff rate for LDCs
		For LDCs	For others	
8507.10 Lead acid of a kind used for starting piston engines	40%	60%	0%	16%
8507.20 Other lead acid accumulators	40%	60%	0%	16%

Table 4: Export of Lead Acid Batteries from Bangladesh to India

	1998-99	1990-00	2000-01	2001-02	2002-03
Export Value (US \$)	541,181	1,060,905	1,281,240	0	0

Source: Bangladesh Battery Manufacturers Association (BABMA).

Dumping Investigation

Two battery manufacturers of India viz. Exide Industries Ltd. and Amara Raja Batteries Ltd. took the initiative to prevent the import of lead acid batteries from Bangladesh. They petitioned the Directorate General of Anti Dumping (DGAD) of India claiming that batteries exported from Bangladesh (as well as from China, Korea and Japan) were being dumped into the Indian market.¹⁰ Accordingly DGAD initiated an investigation on 12 January 2001 into the alleged dumping of batteries. The period of investigation was specified to be 1st January to 30th September 2000.

¹⁰ It is unclear why the two Indian petitioner companies mentioned the names Technolink and Amaz-K Technotrade as the Bangladeshi companies dumping lead acid batteries in the Indian market when they knew well that Rahimafrooz was the *only* exporter.

The preliminary findings of DGAD were made public on 21 March 2001. The volume of import of lead acid batteries from Bangladesh was determined to be less than 3 per cent of the total imports of India. Such a finding of negligible imports required India to terminate the investigation immediately under WTO anti-dumping rules.¹¹ But inexplicably, DGAD decided to continue with the investigation despite its own findings.

The investigation on dumping caught the sole domestic firm exporting batteries to India, Rahimafrooz, by surprise. They had no experience or knowledge of contesting dumping allegations and neither were there any competent people or institutions in the country that could be consulted on the matter. It approached the Ministry of Commerce and Bangladesh Tariff Commission that looked after the trade matters of the country for resolving this dispute. The enormous amount of data required to be disclosed to DGAD for the investigation worried Rahimafrooz. Some of the data were of confidential nature, while the company did not have documents of some of the information sought by DGAD. It was understandably nervous that the confidential data, if provided, would find way to its competitors in India; and this could be harmful to its business strategy in both India and Bangladesh. Nevertheless, Rahimafrooz did complete the DGAD's questionnaire as well as it could and submitted it through Bangladesh Battery Manufacturers Association (BABMA) on 31 May 2001. However, DGAD was not satisfied with the information provided by Rahimafrooz and asked for a large amount of additional data on profit and sales, balance sheet, transactional details of the sales in the domestic market and details of costs etc. It also demanded on-site spot investigation of the company. Rahimafrooz demurred and requested that such a demand be placed through the Government of Bangladesh for its consent. The reluctance of Rahimafrooz to promptly provide access to its premises and to all the information sought by it was interpreted by DGAD as 'non-cooperation'. Having thus satisfied itself of the non-cooperative behaviour of Rahimafrooz, DGAD went ahead with its dumping investigation resorting to Article 6.8 to decide on the case on the basis of what it considered 'the facts' or 'best information available'.¹² Much of it actually came from the complainant Indian companies.

¹¹ Article 5.8 of the *Agreement on the Implementation of Article VI of GATT* requires such termination. See WTO (1999).

¹² *Agreement on the Implementation of Article VI of GATT*. See WTO (1999).

It seems that the Bangladesh side might not have fully appreciated the seriousness of launching of an anti-dumping investigation against its export products by a statutory authority of the importing country. Initially it tried to solve the problem by directly approaching the Commerce Minister of India when the investigation was launched by DGAD of India. Then Commerce Minister of Bangladesh raised the issue with his Indian counterpart during his visit to Delhi in March 2001. Whether the Indian Minister could have intervened in a quasi-judicial process initiated by a statutory authority on the basis of a specific legal complaint (without substantial political risk) is not clear, but in the end he did not halt the investigation process. Meanwhile in Bangladesh a new Commerce Minister took over the ministry after a change in Government in October 2001 following a general election. He wrote a letter to his Indian counterpart after DGAD had released the findings of its investigation in an attempt to seek a resolution of the dispute. The Indian Minister suggested a way around the problem; he advised that the Bangladesh exporter give a price undertaking. Article 8 allows suspension or termination of investigation without the imposition of provisional measures or anti-dumping duties upon receipt of such an undertaking.¹³ However, the Bangladeshi exporter was reluctant to give such an undertaking since they were convinced that they had not dumped in the Indian market, and giving an undertaking would be tantamount to an admission of dumping.

The final findings of the investigation were made public on 7 December 2001. DGAD made a complete turnaround on its earlier findings on a factual matter and determined that import of lead acid batteries from Bangladesh was actually above the 'negligible' level. The investigation did not make use of the substantial information provided by Rahimafrooz because of its determination that the exporter was non-cooperative (but the data on export value which apparently strengthened DGAD's case was selectively used). The findings of DGAD supported the complainants' claim of dumping by exporters of Bangladesh (and the other three countries). Accordingly, it recommended the imposition of antidumping duties on all lead acid battery exports from Bangladesh. As shown in Table 5, the antidumping duties were not imposed either on the batteries (per piece) or on the value of the batteries. Instead, the duties were imposed on the weight of the batteries. This was a clever act as the value per unit of weight tends to be quite low for batteries, which are very heavy items. The effective *ad valorem* duty for even a small duty per unit of weight could be quite large. A local

¹³ *Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade 1994*, see WTO (1999).

newspaper reported that the effective *ad valorem* duty imposed by India on batteries was as high as 131 per cent.¹⁴ Such punitive duties killed off all exports of lead acid batteries from Bangladesh to India. A small window of opportunity that had opened for Bangladesh for diversifying the export basket and increasing export to India was nipped in the bud.

Response of Bangladesh

The statutory authority in Bangladesh to deal with dumping matters at home and abroad is Bangladesh Tariff Commission – an arm of the Ministry of Commerce, Government of Bangladesh, which looks after the country's foreign trade policies among other things. BTC has a Wing headed by a Member that deals with all trade remedial measures including dumping allegations made by local business.¹⁵ It is not clearly specified if BTC is also the sole authority to hear complaints from local businesses concerning dumping charges and investigations against them made by foreign authorities. But the expectation seems to be that BTC should also deal with such allegations made against local exporters and help them to contest the imposition of any anti-dumping duty.

The first anti-dumping duty on a Bangladeshi product (cotton shop towel) was imposed by USA in February 1992 following a petition by Roger Milliken and Co., a giant manufacturer and seller of terry towel and shop towel in USA.¹⁶ This was a big blow to shop towel export since the USA was its principal market. Bangladesh did not have much capacity to effectively deal with this litigious situation. The local firms (all of very modest size) that were the victims of the US anti-dumping duties reportedly did not wish to contest when they became aware of the cost implications. A similar situation obtained when Brazil decided to impose anti-dumping duties on jute bags imported from Bangladesh (and also India) in September 1992. It is prohibitively expensive for a least developed country to contest a developed country's decision to initiate an investigation and to impose an anti-dumping duty on its export product in the institutions of the developed country. It is also difficult to fight a case in a country that speaks a tongue that the LDC is not familiar with. The cost of contesting an unfair trade measure at the WTO dispute settlement body is also very high. Few

¹⁴ Daily *Janakantha* 7 January 2002.

¹⁵ The Commission comprises a Chairman and three Members each heading one of three Wings.

¹⁶ Prior to this, the company had petitioned the International Trade Administration of the Department of Commerce of the US Government for the imposition of countervailing duties on imported cotton shop towel from Bangladesh. The ITA made a negative determination at that time.

LDCs can afford to bear the full costs of litigation. Moreover, the volume of exports is sometimes so modest that the expected gains from a successful challenge could be less than the actual costs of litigation, thus making the challenge economically unprofitable.¹⁷

By the time India imposed antidumping measures, Bangladesh had developed some minimal capacity in respect of dumping issues. The experience gathered in the course of dealing with the anti-dumping duties imposed on batteries by India contributed to strengthening this capacity. It became clear that certain conditions had to be obtained if an LDC were to effectively challenge an anti-dumping measure against its exporters. *First*, there should be ideally a single statutory authority to deal with the matter. If responsibility is not clearly defined, or more than one government department are involved, the victims of the anti-dumping measure will run into difficulties to even initiate the process of contesting the measure since there could be territorial squabbles, rivalries or differences of opinion among the departments resulting in long delays and inaction.¹⁸ *Second*, the victims (exporters) of the anti-dumping measures must be willing to fully cooperate with the statutory authority in resolving the dispute. *Third*, there must be a modicum of expertise in anti-dumping matters within the statutory authority or in the country to ascertain the merit of a dumping case and to mount a legal challenge. *Fourth*, there must be political will to pursue the dispute to the end. Since, only government designated officers or people can participate in WTO deliberations, any complaint lodged with the WTO must be made by the government on behalf of the aggrieved enterprises, and hence, must have its full backing. *Finally*, adequate funds must be made available to pursue the case to the end. These five conditions can be summarized as follows: administrative structure, private-public cooperation, local expertise, political will and financing. These conditions are not easy to meet, and LDCs will be hard pressed to satisfy all of them, particularly the last three i.e. local expertise, political will and financing. Bangladesh could not challenge the anti-dumping duties imposed by the USA and Brazil precisely because these three conditions, as well as private-public cooperation, were not fully met.

However, the situation was different in the case of the anti-dumping duties imposed by India. An important factor that permitted Bangladesh to successfully contest the decision was the dogged

¹⁷ For a discussion of the high costs of litigation, see Gregory Shaffer (2003), Nordstrom (2005) or Bown and Hoekman (2005).

¹⁸ In the event multiple government departments are involved in the process, there must be good coordination and cooperation between them.

pursuit of the case by the victim of the anti-dumping duties, i.e. Rahimafrooz. Quite independently of the government, Rahimafrooz sought redress from the unfair imposition on its export products in India's High Court and also at CEGAT (Custom, Excise and Gold Appellate Tribunal) of India. Unfortunately, both ended in failure as these Indian institutions upheld the decision of their designated authority on dumping matters. Rahimafrooz also lobbied the Government of Bangladesh to take up its case directly with the Indian Commerce Ministry. As mentioned earlier, two successive Commerce Ministers of Bangladesh did take up the matter with their counterparts in India, but without much success. Finally, Rahimafrooz lobbied the Government for taking the case to the dispute settlement body of the WTO. Most importantly, it gave an undertaking to bear all financial costs of the dispute settlement process and cooperate fully with BTC to prepare for and pursue the case.

BTC conducted a detailed study of the battery dumping case. It arrived at the conclusion that the imposition of the anti-dumping duties by India was inconsistent with the provisions of the *WTO Agreement on the Implementation of Article VI of GATT*. It also identified several procedural flaws in the case. The brief that it prepared for the Ministry strongly advised it to seek redress of the Indian anti-dumping measure at the WTO.¹⁹

Another important factor that allowed Bangladesh to go to the WTO is the support provided by the Advisory Centre on WTO Law in Geneva. The legal experts of this Centre provide legal support to LDCs on any disputes in the dispute settlement body of the WTO at only 10 per cent of the full cost. From the information it received from Geneva BTC estimated that if the anti-dumping case went through all the processes of dispute settlement in the WTO, the legal fees would be about one hundred and fifty thousand dollars.²⁰ Hence, Bangladesh, as an LDC, would be required to pay only fifteen thousand dollars to retain the services of the Advisory Centre. Rahimafrooz found this amount affordable. The concessionary service provided by the Advisory Centre thus made it possible for Bangladesh to seek its assistance to prepare the legal case and engage India before the dispute settlement body of the WTO. Although BTC's brief given to the Advisory Centre had spotted many inconsistencies and legal breaches in India's conduct of the dumping investigation and

¹⁹ Bangladesh Tariff Commission (2002).

²⁰ According to the estimates of Nordsrom (2004) legal costs can vary from \$128,500 for a simple case to \$706,000 for a more complex case. There is no upper limit for the really complex cases. Bown and Hoekman (2005) put the 'litigation only' cost of a market access case to be as high as \$500,000.

the imposition of the anti-dumping duties, BTC did not have in-house legal expertise. It had neither any staff with legal background nor any experience of judicial challenge in the WTO or elsewhere. The Advisory Centre helped with the preparation of Bangladesh's 'request for consultations' served on India at the WTO. It also provided two lawyers to assist the Bangladeshi team during the Consultation with India under the provisions of WTO dispute settlement. Without the generous assistance of the Advisory Centre, it would have been very difficult for Bangladesh to seek redress in the WTO.

Political Considerations

In deciding to contest India at the WTO on the anti-dumping dispute, Bangladesh had to overcome a psychological barrier in its diplomatic thinking. Bangladesh Tariff Commission is only an advisory body; the implementation of its recommendations depends on the Ministry of Commerce. While BTC was forthright in its recommendation to take the dispute to the WTO, the Ministry officials were more circumspect. Bangladesh was in the midst of delicate trade negotiations with India with a series of planned meetings with Indian officials. The Ministry felt that their efforts might come to a naught if India were annoyed by Bangladesh's move to push a bilateral trade dispute to the multilateral arena. The Commerce Ministry also received some support from the Ministry of Foreign Affairs in this matter that such a course of action could have untoward diplomatic ramifications and hence, needs to be cautiously viewed in the broader perspective of the overall relation with India. BTC on the other hand argued that the dispute was essentially between two rival companies, and it was most unlikely that the outcome of the dispute would spill over to diplomatic relations. This view also received support of the Permanent Mission of Bangladesh in Geneva that looked after WTO matters. It had earlier advised the Ministry that such legal challenges between trading nations, rich and poor, large and small, are a common occurrence in the WTO dispute settlement body; and these did not have a significant effect on the diplomatic relations between the disputants.

The onus of the decision in this difficult situation rested squarely on the Minister of Commerce. While the Ministry officials were in every day contact with him, BTC had only occasional access as it was housed outside of the Ministry and the Secretariat complex. BTC made its case carefully by pointing out both the positive and negative aspects of pursuing the case. On the positive side, BTC argued that India had made some serious errors in conducting the investigation and some of their

actions clearly breached the WTO rules on anti-dumping measures. It was most unlikely that a neutral adjudicator such as a WTO dispute settlement panel would sustain their decision. In other words, the chances of winning a favourable decision were very high. Even in the unlikely event of an unfavourable decision, Bangladesh would not suffer any additional loss, as it would only mean the continuation of the *status quo*. Since the entire financial cost of the dispute settlement was to be borne by Advisory Centre on WTO Law and Rahimafrooz, there was also no financial involvement of the government.

However, regardless of the outcome of the deliberations in the WTO, Bangladesh side would gain knowledge and experience in handling anti-dumping disputes. The benefits of such knowledge and experience were well worth taking whatever risks there were. A successful outcome would not only open the door for the resumption of export of lead acid batteries to India, it would also make India more circumspect in resorting to such actions in the future. This would be a substantial and tangible achievement on part of the Ministry of Commerce. Against these positive points, the negative point was the risk of retaliation by India in some other front. BTC argued that such an outcome was unlikely as India's political and administrative machinery would foresee that it would most likely do more harm than good to their longer term interests. Bangladesh was one of the largest export markets of India and bordered on several volatile states of India. It was in Indian interest not to blow up any issue that was of limited significance.

The Minister had a tough choice to make. He finally decided in favour of taking the dumping dispute with India to the WTO for settlement. BTC was instructed to prepare for the case.²¹ With this decision Bangladesh broke through a significant psychological barrier in its understanding of trade and diplomatic relations. It became aware of the possibility of using the multilateral trade forum for resolving bilateral trade disputes with powerful trading partners.

BTC had anticipated that India would take steps to settle the anti-dumping dispute soon after Bangladesh moved the case to the WTO. This would likely mean that the case would be resolved at the consultation stage where the meetings and submissions could be restricted to the disputants only. Since India had acted most likely in violation of the WTO rules, it was unlikely that the India's

²¹ The Minister is reported to have briefed the Prime Minister on the matter and obtained her acquiescence.

Geneva team would want to let a weak case go to the panel stage that would necessarily involve jurors and observers from several countries and probably receive much publicity as the first case to be brought to the WTO by an LDC. India was seriously engaged in raising its profile in trade negotiations and present itself as a champion of the trade interests of the developing nations. It wanted to ensure that it was not sidelined in any trade negotiations at WTO. It needed a good image and the support of the developing nations to achieve its objectives. A trade dispute of dubious merit with one of the poorest countries of the world was hardly conducive to improving the image of the country as a champion of the cause of the poorer countries especially when its case was weak and could be easily construed as bullying.

As it turned out, India's WTO team had no appetite for such an irritant to the achievement of their larger objectives. They indicated to the Bangladeshi team immediately after the consultation meeting in the WTO, which was conducted in a surprisingly friendly manner, that their Government would initiate the process to withdraw the anti-dumping duties.²² The Indian side made a request that Bangladesh not proceed any further with the case. The Bangladesh side assured them that Bangladesh also wanted to resolve the dispute quickly such that no further action would be necessary; but it would not abandon the dispute settlement process at WTO at this stage. India still had a few months before the dispute went to the panel stage and if the anti-dumping duties were withdrawn within this period, the case could be terminated. India withdrew the antidumping duties before Bangladesh proceeded to the panel stage in dispute settlement. An undesirable irritant in the trade relations between the two countries was thus expeditiously removed through the good offices of the dispute settlement mechanism of the WTO.

²² Such an intention was earlier communicated to the Permanent Representative of Bangladesh in Geneva.

Conclusion

The establishment of the WTO with a dispute settlement body has opened up a new avenue for redress of trade related disputes among nations. This is a welcome development for the smaller and weaker trading nations who find themselves in a highly unequal position in trade disputes with larger and more powerful nations. The superior negotiating strength of the latter often does not produce a fair outcome for the weaker countries in bilateral negotiations. The opportunity to refer the dispute to the WTO for settlement where experts and observers from several countries become involved can tilt the balance toward a more level playing field. There are many instances in which the weaker countries have won decisions in their favour against the mighty trade powers – an outcome most unlikely to have emerged from bilateral negotiations conducted without the potential of resorting to a WTO legal case.

Despite these advantages, no LDC has been able to take their disputes to the WTO during the first nine years of its existence. Bangladesh was the first LDC to formally approach the WTO (during the tenth year) to settle a trade dispute it had with its powerful neighbour India regarding the imposition of an anti-dumping duty on the export of lead acid battery from Bangladesh. For long two years Bangladesh tried to settle the dispute amicably through bilateral efforts, but without any success. The decision to move the dispute to the WTO was not taken easily or without internal resistance. The difficulties and the psychological barriers that Bangladesh had to overcome in order to seek redress of the unfair trade imposition on its exports by a powerful trading partner provide a good indication of the predicaments that other LDCs will face in moving their trade disputes to the WTO. The experience of Bangladesh could provide important lessons for other LDCs should they contemplate utilizing the dispute settlement mechanism of WTO. As indicate earlier the services provided by the Advisory Centre on WTO Law on concessionary terms were absolutely essential in preparing for and conducting the case against the unfair anti-dumping measure imposed on Bangladesh. Other LDCs that suffer from similar capacity constraints would certainly need the legal services of the Advisory Centre on WTO Law in seeking redress of unfair trade impositions of more powerful countries. It is essential to ensure that the Centre is sustained.

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