
BANGLADESH-INDIA LEAD ACID BATTERY CASE: IMPORTANCE OF WTO'S DISPUTE SETTLEMENT MECHANISM AND LESSON FOR LDCS

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ABSTRACT: *Bangladesh-India trade dispute over India's imposition of anti-dumping duty on Bangladesh's lead acid battery export is a significant event in the history of World Trade Organization's (WTO) dispute settlement mechanism. After 10 years of WTO's establishment, this was the first instance when a least developed country (LDC) challenged a much stronger economy at the highest level of trade related international legal process. After the beginning of the legal proceedings, India's decision to go back to negotiation table to find a mutually agreed solution and subsequent termination of anti-dumping duty proves that the process is important for making the big economies follow the norms and laws of international trade. In addition, the very existence of such mechanism acts as a deterrent against arbitrary enactment of unfair, unlawful and unilateral trade measures. Finally, this is a milestone for other LDCs to overcome the psychological barrier of standing up against stronger economies and claim their fair rights in international trade regime.*

KEYWORDS: WTO, trade dispute, dispute settlement mechanism, LDC, Bangladesh, India.

INTRODUCTION

Trade dispute among nations is not uncommon phenomenon. Before General Agreement of Tariffs and Trade (GATT) and World Trade Organization (WTO), the dispute settlement process was mostly bilateral in nature which frequently favored economically powerful countries. The advent of WTO dispute settlement mechanism has given least developed countries (LDCs) a strong platform to deal with trade disputes irrespective of their relatively weak economic power. This was the case of Bangladesh-India trade dispute regarding the imposition of anti-dumping duty by India. Despite being a LDC, Bangladesh's decision to utilize WTO Dispute Settle Mechanism and initiate legal proceedings at WTO prompted India to rethink their decision, go back to the negotiation table and find a mutually beneficial solution.

Bangladesh-India Trade Relations:

Bangladesh and India are neighboring countries in South Asia. In 2001, when the dispute was starting to unfold, India was top trading partners of Bangladesh in terms of imports (Bangladesh Bank, 2020). Currently, India ranks 2nd after China as 12.24% of total imports of Bangladesh comes from India (Bangladesh Bank, 2020). It is noteworthy that the trade balance have always favored India.

Table 01: Bangladesh-India Trade Balance

Fiscal Year	Total Export (Million USD)	Total Import (Million USD)
1990/01	31	181
1991/92	2	231
1992/93	8	342
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
2003/05	89	1602
2004/05	144	2030

Source: (Bangladesh Bank, 2020)

The Dispute in Brief:

Bangladeshi entrepreneurs have developed a lead acid battery industry which dominated the domestic market and set their eyes on neighboring country's market. In particular, Indian market was lucrative as it was a big one. However, the tariff rate in India for lead acid batteries was 40% MFN tariff rate which was high for Bangladeshi exporters (Taslim, 2005). As a result, export was not financially viable at that time. This scenario changed after the South Asian countries signed a regional preferential trading agreement called South Asian Preferential Trading Area (SAPTA). Under SAPTA, India agreed to give 60% tariff concession. As a consequence, effective rate of tariff came down to 16% which made battery export to India more viable for Bangladeshi exporters.

Utilizing the benefit of tariff reduction, export of Bangladeshis lead acid batteries to India has started to increase.

Table 2: Lead Acid Battery Export from Bangladesh to India

Financial Year	Export Volume (USD)
1998/99	541181
1999/00	1060905
2000/01	1281240
2001/02	0 (result of anti-dumping duty)
2002/03	0 (result of anti-dumping duty)

Source: (Export Promotion Bureau, 2020)

Among the lead battery producers and exporters, Bangladeshi company Rahimafrooz was at the forefront. Ever since Rahimafrooz started exporting to Indian market, fearing loss of market share Indian manufacturers Exide Industries Limited and Amara Raja Batteries Ltd. attempted to create obstacle by petitioning to the Directorate General of Anti-Dumping (DGAD) with dumping allegation. The DGAD started investigating the matter in January 2001 where the investigation period was September 01-30, 2000. In March 2001, DGAD in its primary finding concluded that dumping was happening and decided to carry on full investigations. In its final report in December 2001, DGAD stick to its initial findings. Consequently, DGAD proposed to impose *ad valorem* duty equivalent to 131% (Taslim, 2005). This high tariff lead to complete halt of battery export from Bangladesh from 2001/02 onwards as shown in table 2.

Bangladesh's Initial Response:

Bangladesh has previously experienced anti-dumping duty in two separate cases. The first was imposed by USA in 1992 against Bangladeshi cotton show towel export (Bhattacharya et al. 2000). The second was imposed by Brazil in the same year against Bangladeshi jute bag export (Bhattacharya et al., 2000). In both cases Bangladesh did not contest the decision because of her lack of legal expertise to pursue such litigations and also due to the fact that the local firms were unwilling to proceed as the cost involved was very high relative to prospective gain.

In case of India, however, the opportunity to enter Indian battery market was too good to pass up. Initially Bangladeshi company Rahimafrooz proceeded with the Indian legal system to find a solution. They appealed at the Indian Customs, Excise and Gold Appellate Tribunal (CEGAT) and subsequently at the Indian High Court. In both cases the company did not get favorable result. Apart from the legal process Bangladesh attempted to resolve the issue through diplomatic process. Bangladesh Commerce Minister negotiated the matter with Indian counterpart in March 2001. This issue was again raised in October 2001. In both occasions, the Indian commerce minister did not agree to halt the ongoing quasi-judicial process conducted by a statutory authority. Rather it was advised by the Indian Minister that Bangladeshi accused company should give a price undertaking in line with article 8 of WTO Agreement on Implementation of Article VI of GATT. Article 8 suggests that any proceedings related to anti-dumping can be adjourned or dismissed if the exporter provides an undertaking that it would revise the price of the export product in question or cease the export of the product in order to ensure that any injury caused by the previous dumping can be removed (WTO, 2020). However, Bangladeshi company was reluctant to do so as it was confident that it did not dump and unwilling to accept the unfair allegation by giving the undertaking.

The Political, Economic and Legal Challenges of Bangladesh:

Given the fact that Bangladesh have exhausted legal options within Indian legal domain and possibility of resolution through bilateral negotiation became low, only option left was to seek redress from a multilateral forum. As both Bangladesh and India were members of WTO, it seemed to be a reasonable option to initiate WTO's dispute settlement mechanisms.

However, primarily Bangladesh was hesitant to initiate WTO proceedings because of several factors. Bangladesh had little experience and legal expertise in dealing with anti-dumping matters. As a result the country was unsure of its ability to efficiently conduct the legal process and also

whether the case had merit to win. Another reason of reluctance is that at that time India was Bangladesh's top trading partner and Bangladesh was in the middle of a series of trade negotiations with India. Commerce Ministry officials were unsure of the impact of initiating WTO proceedings on bilateral trade negotiations.

Overcoming the Challenges:

Bangladesh government assigned the issue to Bangladesh Trade Commission (BTC) – the sole authority to deal with matters related to dumping. BTC has conducted detailed study and finally concluded that the imposition of antidumping duty was a violation of WTO Agreement on Implementation of Article VI of GATT. BTC also identified some procedural flaws by the Indian authorities in the process of imposing anti-dumping duties. Considering the fact that WTO laws favors Bangladesh's position, BTC advised to go forward with the WTO Dispute Settlement Mechanism.

BTC suggested that the lack of expertise in conducting litigations at WTO could be overcome by the support from Advisory Center on WTO Law in Geneva (Hossain, 2005). This center provides legal support to the least developed countries (LDCs) at a very low cost (10% of original costs). The center informed BTC that total cost would be around 150,000 USD in case the anti-dumping case went through all the dispute settlement process (Taslim, 2005). Bangladesh, as an LDC, had to pay 10% of that cost which is 15,000 USD. In this way the challenges related to financial and legal expertise could be solved.

Regarding the prospective diplomatic rifts, Bangladesh Ministry of Foreign Affairs officials and Bangladesh's permanent mission in Geneva had the view that there was less chance that the dispute would have any spillover effect on overall relations between two countries. Their logic was that despite India is a big market for Bangladesh, the opposite is also true as Bangladesh was one of the big markets for Indian exporters. Any arbitrary retaliation from India means Bangladesh could also retaliate accordingly which may risk Indian exporters. Under these circumstances, chances were low that India would jeopardize trade negotiations with Bangladesh for a relatively less significant issue.

Legal Justification of Bangladesh's Position:

BTC found two major flaws in the anti-dumping tariff imposition process by India.

First, gross violation of article 5.8 of WTO Agreement on Implementation of Article VI of GATT. Article 5.8 requires that the statutory authority of any country is required to terminate any ongoing investigation in case of finding evidence that the margin of dumping is *de minimis* (WTO, 2020). In other words, if the potential or actual imports even in case of dumping occurs is negligible then the investigation should not continue. The term *de minimis* is not a vague one rather exact percentage is set to explain what constitutes a minimum percentage. In case of exports, the limit is set at less than 2 percent of export price and in case of imports the limit is set at less than 3 percent of total imports of the similar product by the importing country (WTO, 2020). In case of lead battery import from Bangladesh, the percentage was less than 3% which was published by the DGAD of India in its preliminary report (Taslim, 2005). As per law, the investigation should have

stopped at that stage. However, DGAD not only continued its investigation it eventually proposed to impose anti-dumping duty.

Second, article 6.8 of WTO Agreement on Implementation of Article VI of GATT, the parties involved are obliged to provide required information to the investigating authority (WTO, 2020). In case of denial by any party to provide necessary information, the authority are allowed to made decision on the basis of the facts available. Bangladeshi company provided necessary information and completed the questionnaire given by Indian DGAD. It submitted the information through Bangladesh Battery manufacturers Association (BABMA). Despite that Indian DGAD made their decision based on the information provided by complainant Indian companies which is a violation of article 6.8.

Dispute Settlement Process at WTO:

Dispute settlement is a one of the central pillars of WTO. It is an important catalyst to make global trade more stable, secure and predictable. The process is based on specific rules and time tables. It is important to note that the full process is quite lengthy one that sometimes discourages countries to go for it:

Process	Timeframe
Consultation, mediations etc.	60 days
Panel setup and panelists approved	45 days
Final panel reports to parties	6 months
Final panel report to WTO members	3 weeks
Dispute settlement body approves report (if no appeal)	60 days
Total time (without appeal):	1 year
Appeals report	60-90 days
Dispute settlement body adopts appeals report	30 days
Total time (with appeal):	Total: 1 year 3 months

Source: (WTO, 2020)

Bangladesh at WTO:

On 28 January 2004, Bangladesh formally notified its intention to start consultation process with India on following grounds (WTO, 2020):

1. Failure to stop the investigation after finding out negligible amount of import during the preliminary stage analysis.
2. DGAD's unfair determination of injury caused by alleged dumping.
3. Improper treatment of evidence as the data and information provided by Bangladeshi company Rahimafrooz was not properly taken into account in the decision making process.
4. Finally, Indian DGAD failed to issue public notice and also did not provide the involved parties any notice whatsoever regarding the factual evidence, laws and explanations that have led to the imposition of anti-dumping duties.

Bangladesh argued that India violated Articles 1, 2.1, 2.2, 2.4, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 5.4, 5.8, 6.2, 6.4, 6.5, 6.8 (including para. 3 of Annex II), 6.9 and 12.2 of the Anti-Dumping Agreement (WTO, 2020).

In response to Bangladesh's invitation, Indian team showed no appetite to engage into a lengthy legal battle. After the consultation, they indicated that they would like to withdraw the anti-dumping duties. India team also requested Bangladesh to stop the legal process at WTO. In reply, Bangladesh notified that it was willing to terminate the legal process pursuant to formal declaration by the Indian side of the removal of antidumping duties. On January 04, 2005, Indian side removed the antidumping duties by Customs Notification No. 01/2005 (Customs India, 2020). As a result, both parties informed dispute settlement body that a solution has been reached and terminated the legal process at WTO on February 20, 2006.

Implication of the Outcome

1. The direct result of favorable outcome is resumption of lead acid battery export from Bangladesh to India.
2. Bangladesh has gained knowledge and expertise related to conducting international legal litigation at WTO. The country could use the experience gained in the settlement process in any future anti-dumping measures taken by other countries. In 2019, Pakistan imposed anti-dumping duty on hydrogen per oxide (HP) manufactured and exported from Bangladesh. Bangladeshi authorities is now analyzing the laws and preparing to take Pakistan to WTO.
3. India would be more cautious in future to repeat the imposition of anti-dumping duties which does not have merit. The same applies to any other trading partners of Bangladesh.
4. This is a moral boost for other LDC countries as a LDC has stood up to much stronger state and got favorable result. In fact, after 10 years of the establishment of WTO, it was the first case brought forward by an LDC.

CONCLUSION

The outcome of Bangladesh-India anti-dumping case was an example of the importance of WTO dispute settlement mechanism. Given the fact that it was the first case by a LDC against a much stronger economic power and subsequent favorable outcome can be attributed to the existence of fair international legal system in solving trade disputes. This puts pressure on bigger economies to play by the rules of the game. This also gave other LDC countries confidence to act against unfair trade measures by stronger countries in an international forum. Therefore, the significance of Bangladesh-India case is not limited to Bangladesh only rather it has opened a window of opportunity for other LDCs too.

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This paper is updated version of an essay the author had to submit as part of Masters program at The Australian National University, Australia.