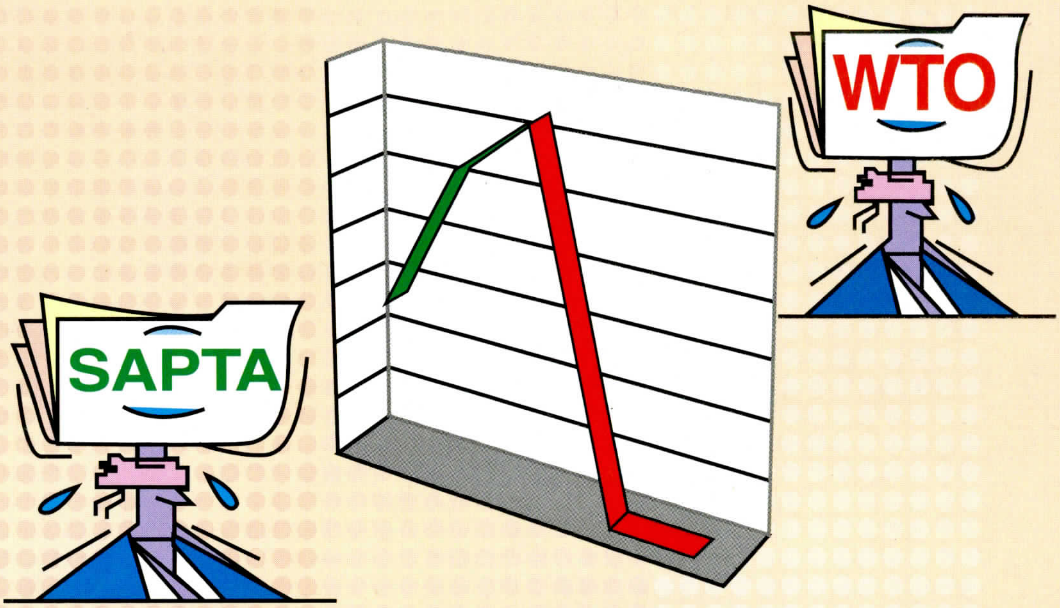
TRADE CONFLICT UNDER SAPTA AND WTO RULES

THE CASE OF BATTERY EXPORT FROM BANGLADESH TO INDIA



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Mohammad Monjurul Hoque

Executive Summery

Bangladesh and India both are the member countries of SAPTA and WTO. Having ***tariff concessions*** from India under **SAPTA** agreement, Bangladesh has started to export its Battery to India from 1997. Since then, Indian customs officials were trying to impose **trade barriers** in different ways in exporting Battery from Bangladesh. In December 2000, on the basis of a complain of **dumping** made by two Indian producers against Bangladesh, India has taken an **anti-dumping investigation** initiative to resolve the case under WTO rules, ignoring the SAPTA agreement totally. The Bangladeshi exporter and the GOB have expressed their serious concern that there is nothing dumping in this matter and they are not going to accept the Indian decision under WTO rules. Rather Bangladesh likes to solve the problem under SAPTA agreement. Ignoring the Bangladeshi responses, India has finally imposed a high rate of anti-dumping duty on Bangladeshi Battery export to India. As a consequence, Battery export from Bangladesh to India has been totally affected. In 1999-2000, annual export value was US$ 5,41,181; for the year 2000-01 export value was US$1,281,240. And in 2001-02 the projected export value was US $ 2,225,180 but in reality it was nil due to the imposition of anti-dumping duty.

Objectives: The study has attempted to analyze the development of the trade-conflict; analyze the Bangladesh's responses towards the conflict; determine the merit of the case/conflict under SAPTA and WTO rules; and recommend measures for trade conflict resolution and future directions. ***Methodology:*** Both primary and secondary sources have been used for collection of data and information. Due to lack of resources, only Bangladeshi concerned organizations and officials have been consulted, Indian counterparts have not been consulted and interviewed.

Development of the trade-conflict: In January 2001, DGAD, GOI issued an **"Initiation Notification"** for Anti-dumping investigation. In this situation a high official from the M/o. Commerce, GOB has expressed his opinion that the GOB is not going to accept the decision. GOB's argument is that the Battery has been exporting under SAPTA agreement; therefore, any complain in this regard must be settled through SAPTA Consultative Committee. According to BABMA there was nothing dumping in exporting battery from Bangladesh to India. In quick response from India the anti-dumping duty on battery export was rejected on March 2001 by the GOI under the **de minimis** clause. Subsequently, the Indian government revived the proceedings

in May 2001. Finally the GOI has imposed world's highest rate of anti-dumping duty (131%) on the battery export from Bangladesh to India, which has been implemented on 1st January, 2002. As a result, battery export from Bangladesh to India is totally stopped. Consequently, Bangladesh has lost US$ 20 lakh to 30 lakh earnings from battery export annually.

Merit of the Case under SAPTA: Considering the SAPTA agreement, BABMA, BTC, EPB, Bangladesh Mission to Geneva and the M/o Commerce all concerned have referred Article 1(3), 1(4), 1(6), 1(8), 1(11), 4,5,7,10,14,15,19,20 of SAPTA Agreement as relevant to the case and argued that the dispute arising in this regard may be resolved through consultation and dispute settlement procedure specified in SAPTA provisions. But the study contends that especially the Articles 14, 15, 20 of SAPTA which referred by concerned organizations and ministry in pursuing the case would not be so much effective and strong arguments in protecting our trading interest in this case. Regarding applicability of the Articles 14,15,20 of SAPTA, it appears that the concerned officials involved in this matter from BABMA, BTC, EPB RBL and M/o Commerce have some misunderstanding about the meaning and interpretation of the above articles of SAPTA. As per the study, in this case Bangladesh may go to SAPTA against India for the charge of violation of the Annex-1(d) of Article-6 and Article 10(d) & (e) of SAPTA Agreement and non-consideration of Bangladesh as a LDC. Before that, Bangladesh needs to examine the case how strongly they can negotiate the case with arguments in terms of the respective articles of SAPTA mentioned above.

Merit of the Case under WTO rules: Considering the WTO rules, the study contends that the calculation of normal value by DA of India is inconsistent with the WTO rules, because erroneous methodology was used for determining the normal value and the resulting margin of dumping. The study further contends that the determination of injury was not based on positive evidence and did not include an evaluation of all relevant economic factors and information, which led to an erroneous determination of material injury suffered by the petitioner. The study also holds the view that establishment of the facts by the DA of India was not proper and their evaluation was not unbiased or objective in terms of export volume and value. The study also claims that the DA of India have not taken into account Bangladesh's special situation as a LDC. Therefore, from the study it appears that India has violated Articles 2, 2.6, 3, 5.2(ii), 5.3, 5.8, 6, of the Anti-Dumping Agreement under WTO and Article I and VI of GATT 1994; and the case has good merit in favour of Bangladesh under WTO rules.

Considering the findings, it is better to prove Indian demand of dumping **invalid** at the **Dispute Settlement Body (DSB)** of WTO. And simultaneously Bangladesh needs to pursue the matter through the political & diplomatic channels under ministerial level very carefully to have meaningful resolution of the trade conflict with India.

The main problems in responding the case are lack of knowledge and understanding of the games of the rules, implications and interpretation of different Articles of SAPTA and WTO rules by concerned officials and exporters; lack of institutional and professional expertise support to help the Ministry for policy decision; deficiency in diplomatic aptitudes; problem of follow up the case and reluctantness of the exporters; lack of ownership feelings by the officials of the government in pursuing the case.

To face the challenges, Bangladesh must have to have intellectual expertise and institutional capabilities in responding the trade disputes effectively to safeguard our trading interests. For these, Bangladesh government may form a five member expert team to review the merit of the case quickly so that steps can be taken to go to DSB of WTO if necessary, must develop a core group of officials; a collaborative program must be organized with the World Trade Institute (WTI), Geneva and concerned training institutes in the country for training to the core officials; and a Foreign Trade Institute should be established immediately for long term capacity building to respond the challenges properly and effectively and to maximise the benefits from globalization and liberalization.

List of Abbreviations

AD	Anti Dumping
ADA	Anti Dumping Agreement
A.H	Ampere Hour
ARBL	Amara Raza Batteries Limited
BABMA	Bangladesh Accumulators and Battery Manufacturing Association
BMG	Bangladesh Mission to Geneva
BPATC	Bangladesh Public Administration Training Centre
BTC	Bangladesh Tariff Commission
CEGAT	Customs, Excise and Gold Appellate Tribunal
CIF	Cost, Insurance & Freight
C&F	Cost & Freight
Col.	Column
DA	Designated Authority
DG	Director General
DGAD	Director General of Anti Dumping
DGCIS	Director General of Commercial Intelligence & Statistics
DS	Deputy Secretary
DSB	Dispute Settlement Body
EIL	Exide Industries Limited
EPB	Export Promotion Bureau
FBCCI	Federation of Bangladesh Chambers of Commerce and Industries
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
GOB	Government of Bangladesh
GOI	Government of India
H.C	High Commission
HS	Harmonized System
IADD	Indian Anti Dumping Department

ITC	International Training Centre
ITO	International Trade Organization
JDGFT	Joint Director General of Foreign Trade
JS	Joint Secretary
Kg	Kilogram
LDC	Least Developing Countries
MCCI	Metropolitan Chambers of Commerce and Industries
MFN	Most Favored Nation
M/o	Ministry of
NTB	Non Tariff Barrier
OEM	Original Equipment Manufacturers
OGL	Open General License
PD	Provisional Duty
QR	Quantitative Restriction
RBL	Rahim Afrooz Battery Limited
Rs	Rupees
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asian Free Trading Arrangement
SAPTA	SAARC Preferential Trading Arrangement
SIL	Special Import License
UAE	United Arab Emirates
UNU	United Nations University
USA	United States of America
VC	Vice Chairman
WTI	World Trade Institute
WTO	World Trade Organization

List of Tables, Chart and Figure

I. INTRODUCTION

1.0 Introduction

1.1.1 Bangladesh and India have a very good, long-standing and historic relationship in terms of social, political, cultural and trading. The two countries are diverse in terms of GDP, GNP, area, population, export and import. As far as trading is concern, India is a very important trading partner to Bangladesh. Bangladesh has a very large trade gap with India. Both the countries have more or less similar pattern of consumption and production. That's why for long, trading list is contained with traditional trading items in these two countries. Due to impact of ***globalization*** and ***liberalization*** of its trade regimes under **SAPTA** and **WTO** rules, recently some new trading items have entered in the trading list of these two countries and complex trading scenarios have emerged. **Battery** is one of the important new trading items on which Bangladesh has received ***tariff concessions*** from India under **SAPTA agreement**. Accordingly, Bangladesh has started to export Battery to India from 1997. Since then, the Indian customs officials were trying to impose **trade barriers** in different ways in exporting Battery to India. In spite of that, Battery export was increasing gradually in the markets of India. In February 2000, a custom officer at Haridaspur imposed 10% additional tariff, showing a cause that the price of the exported battery is not correct. Subsequently, in August 04, 2000, following an inquiry, the **Indian Central Excise Board** declared that the price of the battery exported to India from Bangladesh is correct. There is no under invoicing/ over invoicing evidence found in the inquiry. In the year 2000, in total 57,834 pieces of Battery, valued in Rupee 4 crore 88 lakh were exported from Bangladesh to India.[1]

1.1.2 But on December, 2000 on the basis of a complain of dumping, made by two producers from India against battery export from Bangladesh, India has taken an initiative to settle the anti-dumping case under WTO rules, ignoring the SAPTA agreement totally. Consequently, Bangladeshi exporters and the government have expressed their deep concern on the issue. In this respect a high official from the Ministry of Commerce, Government of Bangladesh (GOB) has expressed his opinion that the Government of Bangladesh is not going to accept the decision of the case under WTO rules. As because the Battery has been exporting to India under **SAPTA**

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[1] Rahman, Kawser (2001); India is going to impose 900% anti-dumping duty on Bangladeshi Acid Battery; a report published in The Daily Janakantha, dated : 25.02.2001.

agreement, therefore, any complain in this regard must be settled through SAPTA Consultative Committee.[2]

1.1.3 Moreover, Bangladesh has clearly expressed its position that there is nothing dumping in exporting battery from Bangladesh to India. Ignoring the requests from Bangladesh, finally India has imposed anti-dumping duty against Bangladeshi batteries and consequently Bangladeshi battery export has been totally affected.

1.1.4 In this way, this trade conflict has surfaced as a very critical issue for both Bangladesh and India in maintaining long historical and trading relationships between the two countries. As a LDC, Bangladesh must respond properly and effectively with a very strong logical and legal argument to safeguard its trading interests with India. As India is a very important trading partner, Bangladesh has to be very careful in handling this trade conflict. This study has attempted to provide a descriptive and analytical presentation of the conflicting situation under SAPTA and WTO rules. So that the party concerned including the Government of Bangladesh and its officials, exporters, business executives can act and respond properly, and take necessary measures & steps towards safeguarding its trading interests and harvest maximum benefits from resolving this conflict and also provide future course of action in trade dispute settlement and negotiation.

1.2 Rationale of the Study

1.2.1 In the present globalized economy, international trade is now operating under harmonized rules and multilateral trading system of WTO. GATT has four basic and simple rules to pursue open and liberal multilateral trading system. The third rule requires countries to conduct their trade without discriminating among countries from which goods are imported or to which goods are exported. The rule is embodied in the ***most-favored-nation (MFN)*** principle. ***An important exception to this rule is permitted in the case of regional preferential arrangement.***[3] Therefore, to pursue open and liberal trade policies, WTO recognizes regional trading arrangement very significantly. As a member country of WTO and SAPTA, Bangladesh is under an obligation to abide by the discipline of the rules of the system of both WTO and SAPTA like other member countries. The interaction might be very complex between rules and agreements of WTO and SAPTA. Any country may try to exploit this complex trading scenarios in favour of their trading

[2] Rahman, Kawser (2001); India is going to impose 900% anti-dumping duty on Bangladeshi Acid Battery; a report published in The Daily Janakantha, dated : 25.02.2001.

[3] M/o. Commerce, GOB (1998); Final Act of Uruguay Round of Multilateral Trade Negotiation; A Report of the Study Team, Dhaka, p11, para 4.

interest. The trade- conflict on Battery export from Bangladesh to India might be developed from that exploiting point of view.

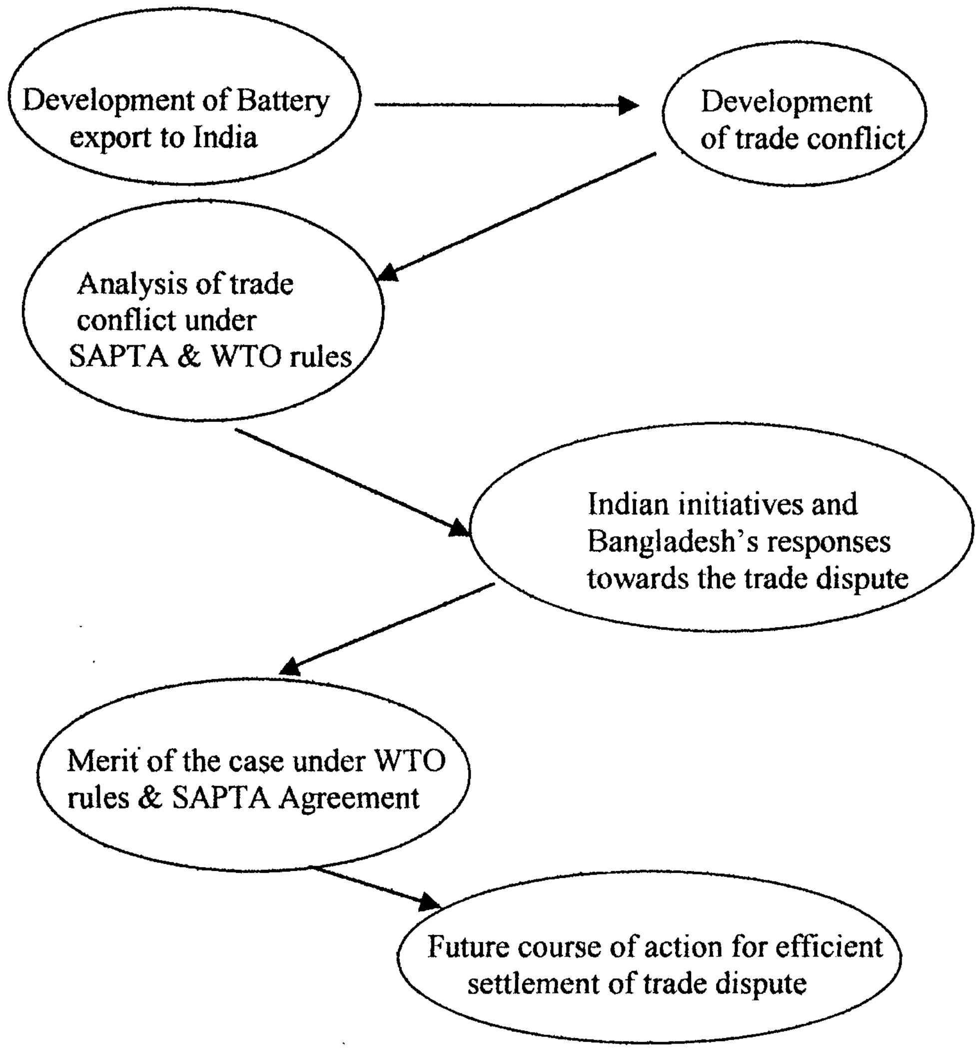
1.2.2 Therefore, to handle this conflicting situation, Bangladesh needs to understand clearly and confidently the games of the rules and their interaction to safeguard its trading interests and harvest maximum benefits from both the systems WTO and SAPTA. As a least developed country, Bangladesh is carefully observing the process of globalization as well as rationalizations of its international trade whether Bangladesh has been able to gain its benefits, nor been exploited by other partners. By the course of time Bangladesh is experiencing in increasing international trade intensity, that a total value of export and import has increased in absolute terms, and gradual decrease in trade imbalances over time.[4] Bangladesh is always very sincere in responding to its trading partners but could not able to gain from nondiscriminatory, S&D treatments and reciprocity benefits from some of its trading partners in response. This conflicting situation on Battery export is not an exception to this. This conflict is not the end, there might be more in future. Therefore, by equipping the officials & business executives with the rules and systems on both SAPTA and WTO, we must have to have intellectual expertise to respond properly and effectively to safeguard our trading interests and maximize the benefits from globalization and liberalization.

1.2.3 Therefore, it is necessary to examine and analyze how Bangladesh is responding to this conflict, whether it is going on right direction or will be able to achieve its desired benefits, or if there is any problem of understanding, then how this problem can be solved. To examine all these aspects on the issue, the problem has been studied. Moreover, the study will help to provide clear understanding of the problem in terms of WTO rules and SAPTA agreement and will provide future directions for course of actions to face this type of challenges and protecting our trading interests in fair playing with trading rules and systems. In addition to these, the study can be used as a training input in different training courses at BPATC and others training institute which will help the officials in enhancing their knowledge and interest on trade dispute settlement and negotiation. In this perspective the study has immense national importance.

[4] Hoque, M. Monjurul (2000), Impact of Globalization on International Trade of Bangladesh, a research essay submitted in partial fulfillment of the International Course on "International Trade and Dispute Settlement"; at the United Nations University (UNU), Tokyo, Japan, June, 2000.

1.3 Conceptual Framework

1.3.1 The study has materialized its objectives, findings and outcomes through the following conceptual steps:



1.3.2 There are few basic concepts in the problem, which need to be clearly conceptualized first, these are Trade Conflict, Globalization, WTO, SAPTA and Battery. ***Trade conflict:*** After having tariff concession from India, Bangladesh has started to export its battery to India since 1997 under SAPTA and the export curve was gradually shifting up. But on the basis of a complain of dumping made by two Indian producers against Bangladesh, India has taken an anti-dumping investigation initiative to resolve the case under WTO rules, ignoring the SAPTA Agreement totally. The Bangladeshi exporter and the GOB have expressed their serious concern that there is nothing dumping in this matter and they are not going to accept the Indian decision under WTO rules. Rather Bangladesh likes to solve the problem under SAPTA agreement. Ignoring the Bangladeshi responses, India have finally imposed a high rate of anti-dumping duty on Bangladeshi Battery incase of export to India. As a consequence, Battery export from Bangladesh to India has been totally affected. And Bangladesh has lost its trading interest. **Globalization** means free flow of **finance** and **goods.**[5] Neoclassical Economist's standard approach to globalization is to emphasize the benefits of the free flow of goods, capital and ideas.[6] Globalization claims that it increases wealth by increasing efficiency. It also claims that open, international trade enables each country to specialize in goods and services, which another country produces better. In this fashion each country can exploit its "***comparative advantage***". The net result is a general increase in goods and services, which become available to consumers in both countries. David Ricardo gives the concept of comparative advantage, leading to mutual gains from international trade. It is implicit in this approach that all individuals will be able to consume more things, more cheaply, under a globalize economy and therefore human welfare is increased. The process of globalization has influenced quality and quantity of global, regional, and bilateral trade. The most renowned features of globalization are the move by countries towards harmonized rules and policies for international trade. Through the process of the Uruguay Round of negotiation that took place in the period of 1986-94, ultimately resulted in a multilateral agreement, the **World Trade Organization (WTO)** that provides the institutional and legal foundation for the new multilateral trading system that came into being on January 01, 1995.[7] The WTO agreement covers trade in goods, services and investment, although with different degree of comprehensiveness.[8]

1.3.3 **The WTO** is based on the assertion that an open, stable and predictable world trading system, based on non-discriminatory rules, will enable all countries to maximize their well-being.[9] The basic objective of the WTO multilateral trading system is to encourage and promote liberal trade policies, but not policies and not necessarily to establish conditions for free and barrier less trade among countries. The resulting liberal access to markets enable industries in different

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[5] Bhutto, Benazir (2000), "Challenges of Globalization" a report published in the Daily Star, P.5, Col. 1-4, dated: 24.2.2000, Dhaka.
[6] Rodrick, Deni (1997). Has Globalization Gone Too Far? Institute of International Economics, Washington.
[7] WTO (1999), World Trade Organization, WTO Agreement Series-1, Agreement Establishing the WTO, Switzerland, P.5.
[8] Rodrick, Deni (1997), PP.3-4.
[9] An Internet Source (2000), Economic Globalization, p4, (http://www.yorku.ca/faculty/academic/respence/eglob.htm).

countries to compete with one another under conditions of ***fair competition*** and thus produce and sell products in international markets for which they have ***comparative cost advantage.***[10]

1.3.4 Fair trade is not always the case in real situation, "unfair" trade practices are also a serious threat in pursuing trade. There are obligations in relation to "unfair trade practices". The 'unfair' practices are perceived to affect the ability of competitors to compete 'fairly'. In other words the practices are considered to affect the free-market conditions of the economy. There is also some disagreement as to whether the practices in question are in fact 'unfair' as such. The WTO code does not expressly identify the barriers as "unfair' trade practices. The code however focuses on ***subsidies*** and ***dumping***. These have been considered as ***unfair*** trade practices. [11]

1.3.5 ***Dumping (Asif, pp29-30):*** Dumping may be described as the introduction of products by private parties into the economy of another state at a price below its cost or domestic price. The practice of dumping thus is essentially a price discrimination phenomenon. More specifically, dumping is defined as the sale into the market of another member of a product at less then its normal value. Generally, the normal value is a reference to the price charged in the domestic market of the exporter. The normal value can be established with reference to the price of a like product in the domestic market or in the absence of such a sale in the domestic market with reference to the price of a like product sold to the market of a third country. A like product is defined as a product that is identical or, in the absence of such a product, another product that has similar characteristics. Where no such comparison can be made then the normal value is constructed with reference to the cost of production in the country of export plus a margin for profits.

1.3.6 **SAARC** - South Asian Association for Regional Cooperation **(SAARC)** came into being in December, 1985 with seven South Asian Countries as members: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. SAARC has made some progress in cooperation in the field of tourism, culture, education, food, agriculture, suppression of terrorism etc. Cooperation in trade also came in a meaningful way for the first time through the signing of **SAARC Preferential Trading Arrangement (SAPTA)** at the Seventh Summit in Dhaka in 11 April 1993.[12]

[10] M/o. Commerce, GOB (1998), P.5.
[11] Asif H. Qurashi, WTO, PP. 27-29.
[12] Article 25 of SAPTA; P.18.

1.3.7 **SAPTA** aims at "Liberalization of trade in the region through step by step approach in such a manner that countries in the region share the benefits of trade expansion equitably". SAPTA recognizes the special needs of the LDC Contracting States and agreed to negotiate tariff preference initially on product-by-product basis. At the Eight Summit in New Delhi in May 1995, SAARC resolved to make SAPTA (effective by 01.01.1996). Infect, SAPTA becomes effective on December 1995, on the 10th anniversary of SAARC. Initially concession was given on very few items (226), which were of little commercial import. Subsequently, all the members of SAPTA added about 1000 items. The Ninth SAARC Summit in the Maldives in 1998 decides that SAPTA should become SAFTA by the beginning of the new millennium.

1.3.8 In the 2nd phase meeting of SAPTA which was commenced in Colombo in March 1996 and ends in Katmandu in November 1996 proposed altogether 2013 items for tariff concession. Out of which 779 items were largely applicable for least developed countries like Bangladesh, Bhutan, Maldives, and Nepal. Here, Bangladesh offered in total 271 items for tariff concession and in return Bangladesh received tariff concessions on 911 items from India. As far as Bangladesh is concerned her offers accounted for less than 4% of the total concessions on offer. In contrast, Bangladesh has received a substantial share of total concessions under the agreement. Bangladesh is the major recipients of concessions offered by both India 56% and Pakistan 51% of the country total.[13]

1.3.9 **Battery**: Name of the Product for which the petition is filed for the charge of dumping in the Indian market by the exporters from the People's Republic of China, Korea, Japan and Bangladesh is **Lead Acid Battery.**[14] A battery is an accumulator and is used to hold current/power and later discharge over a period of time. Lead and acid are used to first accumulate current (power), which is then discharged over a very long period of time. The concentration of acid and quantum of lead would determine the current (power), which can be stored by the battery. The discharge of the battery is determined by the power of the battery and speed (ampere) of discharge. The power of the battery and its speed of discharge are determined by the lead content in the battery. Higher lead content would provide higher discharge and/or higher power in the battery. Lead and acid is the accumulator of power in the battery and gets charged and discharged.

[13] Siddique, H.G.A. (1999), "Development of SAPTA from SAARC", Bichayan-A Quarterly Research Journal, (ed.) Habibullah N. Karim, Dhaka, p 25.

[14] Exide Industries & Amara Raja Ltd. (2000), Petition for Imposition of Anti-dumping Duty against import of lead acid battery from Bangladesh, China, Japan and Korea, A.K. Gupta, Consultant, New Delhi, p 1.

In fact, there is a direct correlation between the volume of lead in the battery and its life, power and discharge ability.

1.4 Scope of the Study

1.4.1 The study has covered only the aspects related to trade-conflict on Battery export to India from Bangladesh. Specifically, SAPTA agreement and Anti-dumping rules under WTO have been the main concern under the purview of the study. The persons concerned in Bangladesh have been covered, the study did not cover Indian counterpart due to time, resources and technical constraints.

1.5 Objectives

1.5.1 The objectives of the study are to:

i. analyze the development of Battery export to India;

ii. review and analyze the development of trade- conflict on Battery export;

iii. analyze and determine the merit of the case under of SAPTA and WTO rules;

iv. recommend measures for trade conflict resolution and future directions.

1.6 Methodology

1.6.1 To attain the objectives of the study, related SAPTA agreement and WTO rules have been studied and analyzed the trade conflict situation, according to the process mentioned in the conceptual framework. **Sources of Data and Information:** The data and information for the study have been collected from both primary and secondary sources. Very limited range of primary data have been collected mainly from concerned officials of the government, exporters, and academics in Bangladesh part through personal interview and consultation. For secondary data, government documents, SAPTA agreement, WTO rules, business documents, books, journals, articles, newspapers have been consulted extensively. Internet source has also been used for collecting data and information.

1.7 Limitation of the Study

1.7.1 The findings, analysis and interpretation of the study may not be a fully or partly an outcome decisions of any legal authority rather it is the researcher's own academic and intellectual exercise based on available data and information to provide different and alternative intellectual foundation and thinking in carrying out the problem on right track and safeguarding our own legitimate trading interests. As the issue is very sensitive and legal process is in progress, the study has some data gaps due to non- availability of data and information. There was no scope for analysis of the views of the Indian counterpart due to resource, time and technical constraints.

II. DEVELOPMENT OF BATTERY EXPORT FROM BANGLADESH TO INDIA

2.1 Bangladesh initiated its battery export to India for the first time in **May 1996** under **Special Import License (SIL).** Since then battery exports were facing obstructions and harassment by Indian authority at different steps. Exported batteries had been detained and battery godowns had been sealed in India by their customs authorities. As a result, at one time **Rahim Afrooz Battery Limited** (RBL) compelled to stop battery export to India.[15] Subsequently, due to impact of globalization and liberalization of its trade regime under SAPTA and WTO rules, recently some new trading items have entered in the trading list of the two countries. The Battery export from Bangladesh to India has developed as a result of the liberalization of its trade regimes under SAPTA agreement. And the Battery becomes one of the important new trading items on which Bangladesh has received tariff concessions from India under SAPTA agreement. Accordingly, Bangladesh has been exporting Battery to India since1997.[16]

2.2 In the Article-7 of the SAPTA agreement, an initial **National Schedule of Concessions** agreed to by the contracting states is attached as Annex-II in the agreement. A consolidated National Schedule of Concessions granted by India in the first, second and third rounds of trade negotiations under SAPTA agreement has been presented in the Annex-II of the agreement. According to the concessions list (annex-II of SAPTA) granted by India, tariff concessions have been given for import of Battery in the SL. No. 2012, HS code 8507.10 item Lead-acid, of a kind used for starting piston engines and SL. No. 2013, HS code 8507.20 item other Lead-acid accumulators in the third round of trade negotiation under SAPTA agreement. The basic tariff rate for the above two items were 40%, 40% respectively in the year 1999-2000. In the third round negotiation under SAPTA agreement, the rate of tariff concessions have been given by 60%, 60% respectively as a percentage of basic tariff on the above two products for LDCs under SAPTA (**Annexure-I**). And no special non-tariff barriers (NTBs) with particular reference to quantitative restrictions (QRs) have been imposed. As a member of the SAPTA contracting states and as a LDC, Bangladesh has been enjoying the tariff concession given on the battery in exporting from

[15] Daily Ittefaq, dated: 07.08.2001, Battery exported from Bangladesh is detained at Asham, India.
[16] Rahman, Kaiser (2001); India is going to impose 900% anti-dumping duty on Bangladeshi Acid Battery; The Daily Janakantha, Dated 25.02.2001.

Bangladesh to India. Due to this tariff concession, Bangladesh has been enjoying only 16% effective tariff (basic) instead of 40% in exporting its battery from Bangladesh to India. Relevant part of the Annex-II of SAPTA agreement has been presented in Table-1.

Table-1: Relevant Part of the Annex-II of SAPTA Agreement: Tariff Concessions Given by India

Sl.No	HS code	Description of Product	Round	Basic Tariff * % (1999-00)	Extent of Tariff Concession under SAPTA (as % of tariff)		Any special NTBs with particular reference to QRs	Concession to SAARC countries vis-a-vis such NTBs/QRs	Remarks
					For all member countries	For LDCs			
1	2	3	4	5	6	7	8	9	10
2012	8507.10	Lead-acid, of a kind used for starting piston engines.	Third	40%		60%			
2013	8507.20	Other lead-acid accumulators	Third	40%		60%			

* **"Tariff"** means custom duties included in the national tariff schedules of the contracting states with respect to the aforesaid goods read with any other notification (for the time being in force) issued in respect of such goods but excluding notifications giving effect to the concessions under other Preferential Trading Arrangements.

Tariff lines against which Restricted is shown at column 8 and left blank at column 9 means that the items are freely importable from SAARC Member States.

Source: Annex-II of SAPTA Agreement, Tariff Concession Granted by India P. 56. (collected from internet)

2.3 Yearly demand for batteries in Bangladesh is 2 lakh pieces but yearly production capacity of the local companies is 8 lakh pieces. The battery is being exported abroad from Bangladesh by meeting local demand of the country. As per certificate of the Bangladesh Accumulators and Battery Manufacturing Association (**BABMA**), Rahim Afrooz Batteries Limited (RBL) is the producer and only exporter of batteries from Bangladesh to India.[17]

2.4 In the third round negotiation under SAPTA, as a LDC, Bangladesh received tariff concession from India in exporting lead-acid batteries, consequently battery export resumed under SAPTA in May 1997. Effective export resumed after 1st April 1998 for Industrial Batteries and 1st April 1999 for Automotive Batteries when they were placed under OGL. Since then, successful growth of battery export was continuing. Table-2 shows that over the last four years from 1998-99 to 2001-2002, the annual export value in US $ have been increased significantly. In 1998-99, annual export value was US$ 5,41,181 and for 1999-2000 annual export value was US$ 5,41,181;

[17] BABMA letter No. NR/BABMA/95/2001, Dated: 23.02.2001 written to DGAD of India.

for the year 2001-2002 the projected export value was US $ 2,225,180. Annual export growth was achieved by 96% in 1999-2000 compared to the export value in 1998-99 and the growth projected for the year 2001-2002 was 76%. The figures express successful growth of export was continuing.

2.5 But due to the effect of imposition of anti-dumping duty by India on the battery exporting from Bangladesh, battery export has been totally stopped. In the year 2001-02, where the projected export was US $ 22,25,180, in reality it becomes nil (Table-2). Same situation has also prevailed in the year of 2002-03 (July – Sept) in case of export to India (Table-3). Due to effect of anti-dumping proceeding the battery export sharply decreased to nil.

Figure-1
Trend of Battery Export from Bangladesh to India

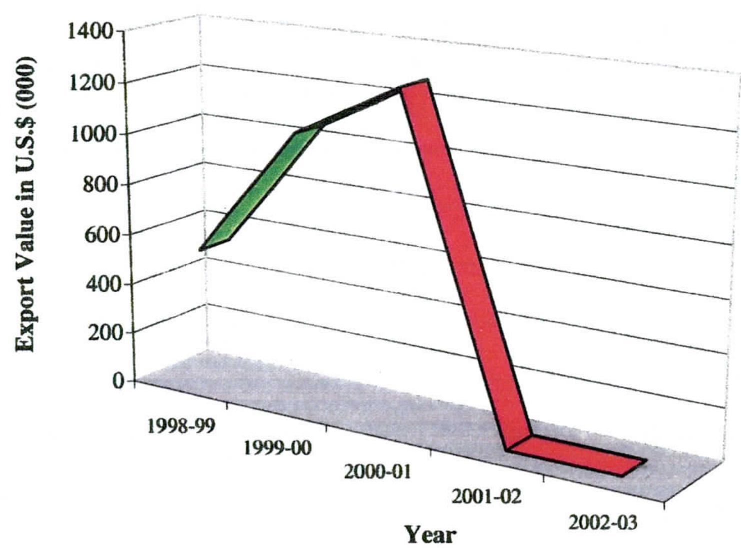

Table-2: Development of Batteries Export to India

(US $)

Year / Description	1998-99	1999-2000	2000-2001	2001-2002 Projected (Actual)	2002-2003 (July – Sept.)
Annual Exports Value in US$	5,41,181	1,060,905	1,281,240	2,225,180 (0)	(0)
Annual Export Growth rate	-	96%	21%	76%	-

Source: RBL letter No. GRA/05/2001-5, dated: 09.08.2001, written to the Secretary, M/o. Commerce. The last two years figure in ( ) received from EPB, (Table-3).

Table-3: Export of Accumulator Battery and Parts from Bangladesh

(Value in '000' US$)

Countries	1998-99	1999-2000	2000-2001	2001-2002	2002-2003 (July-Sept)
India	422	381	88	-	-
Singapore	231	-	133	612	55
Japan	1	-	-	-	-
Kuwait	-	-	359	264	-
Srilanka	-	-	198	248	123
Lebanon	-	-	151	-	45
UAE	-	-	56	196	44
Pakistan	-	-	33	-	1
Thailand	-	10	28	67	42
Saudi Arabia	-	-	20	-	53
Madagascar	-	-	-	27	-
USA	-	-	-	-	39
Total	**654**	**391**	**1066**	**1414**	**402**

Source: Fax Message from EPB through Joint Secretary, Statistical Division, **(Annexure- II)**

III. DEVELOPMENT OF TRADE CONFLICT ON BATTERY EXPORT FROM BANGLADESH TO INDIA

3.1 Chronology of the Conflicts [18]

May, 96	The first battery export from Bangladesh to India was in May 1996 under **Special Import License (SIL).**
Oct.,96	The Joint Director General of Foreign Trade (JDGFT), Kolkata issued show-cause notice to the Importer, alleging illegal importation of automotive batteries not specified in the Indian Import Policy.
Oct., 96	Exide India Ltd. (EIL) lodged a trademark case in Kolkata High Court against Rahim Afroz product, alleging illegal use of their trademark. After about a year, the case was awarded in favour of RBL by the court.
Nov.,96	An adjudication notice was released by JDGFT, Kolkata imposing a penalty of I Rs. 1 crore as claim for improper import, which was five times value of the import.
Nov., 96	Customs personnel, under instruction from their Head Office in Delhi raided RBL's importer's godowns accusing them of having stock of automotive batteries in excess of what was actually declared to the customs. The raids proved futile.
Nov., 96	Customs, Preventive & Intelligence of West Bengal sent confiscation order forbidding further selling of existing stock and for keeping unsold stock separately.
Nov., 96	West Bengal Sales Tax Authority also began enquiries regarding purchase & sales of Bangladeshi batteries alleging possible irregularities.
Nov., 96	Exide sent letter to Battery Dealers in India "Cautioning" them of legal consequences for dealing in "smuggled" batteries from Bangladesh. At one time in 1996 battery export totally stopped.
May, 97	Battery export resumed under SAPTA.
April 01, 98	Industrial Batteries (HS code 8507.20) were in the negative list of import in India before 01.04.1998 and were placed under OGL from 01.04. 1998.
March 31,99	Automotive batteries (HS code 8507.10) were categorized under negative list of imports in India. Effective 1st April 1999, Automotive batteries have been placed under OGL. The two Indian Companies demanded that in fact import have started hurting the domestic industry immediately after being transferred to OGL.

[18] i) BABMA (Feb. 2001), A BABMA Report on "Chronology of Events".
ii) Exide (Dec. 2000), A forwarding letter by Exide written to the DGAD, India, dated: 18.12.2000.

Dec.,99 Successful growth of export continuing.

Feb., 00 Haridashpur Customs Authority declared that any import of battery from Bangladesh will be loaded with 10% additional duty and will also require Provisional Duty (P.D.) Bond.

February, 00 A custom officer at Haridashpur imposed 10% additional tariff on Bangladeshi batteries, showing a cause that the price of the exported battery is not correct.

July, 00 EIL launched a press campaign in India against "invasion" of Bangladeshi battery; seeking counter actions by the Govt. of India.

August 04,00 Following an inquiry, the Indian Central Excise Board declared that the price of the battery exported from Bangladesh to India is correct. There is no under invoicing evidence found in the inquiry.[19]

Aug.,00 EIL announced in the press in India that it is setting up battery plant in Bangladesh because of more favorable import duties from Bangladesh to India.

Sept.,00 Six consignments of Bangladeshi batteries to India were detained by the Indian customs on charges of smuggling at Haridashpur of South-Western Benapole land border in Sept., 2000.[20]

Dec., 18, 00 EIL and Amara Raja filed a case to the DGAD India for imposition of anti-dumping duty on Bangladeshi battery export, saying that the exporters from Bangladesh, China, Japan, Korea have resorted to dumping these batteries in the Indian market due to easing of import restrictions and transfer of batteries into OGL.[21]

3.2 Indian Actions & Initiatives Vs Bangladesh's Responses Towards Conflict

3.2.1 The Axide Co. and Amara Raza Batteries, the two Indian battery producing company have filed this anti-dumping petition against such two Bangladeshi companies named Amaz-K Technotrade and Techno Link International those are in no way involved with battery exporting to India and not even battery producing in Bangladesh.[22]

3.2.2 On 12th January 2001, DGAD, GOI issued an **"Initiation Notification"** for Anti-dumping investigation **(Annexure- III)**.[23]

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[19] Rahman, Kaiser (2001).
[20] The Independent (2001), Indian Companies block battery export from Dhaka, Dated: 07.08.2001.
[21] EIL forwarding letter of the AD Petition and RBL Report on Chronology.
[22] Pratham Alo (2001), Dated: 20.12.2001.
[23] Initiation Notification for Anti-dumping Investigation, No.67/1/2000-DGAD, dated 12th January 2001.

Dec.,99	Successful growth of export continuing.
Feb., 00	Haridashpur Customs Authority declared that any import of battery from Bangladesh will be loaded with 10% additional duty and will also require Provisional Duty (P.D.) Bond.
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[22] Pratham Alo (2001), Dated: 20.12.2001.
[23] Initiation Notification for Anti-dumping Investigation, No.67/1/2000-DGAD, dated 12th January 2001.

3.2.3 On the basis of the complain of dumping made by the two Indian Battery producers against battery export from Bangladesh, India has taken the initiative to settle the case under WTO rules by imposing anti-dumping duty, ignoring the SAPTA agreement totally. In this situation a high official from the M/o. Commerce, GOB has expressed his opinion that the GOB is not going to accept the decision of anti-dumping measure applied by Indian counterpart in this case under WTO rules. GOB's argument is that the Battery has been exporting under SAPTA agreement; therefore, any complain in this regard must be settled through SAPTA Consultative Committee.[24]

3.2.4 According to BABMA there was nothing dumping in exporting battery from Bangladesh to India. The Indian initiatives in this regard are based on false pretexts and wrong allegations.[25]

3.2.5 In this way, the trade conflict has developed between Bangladesh and India in exporting batteries.

3.2.6 A move to slap anti-dumping duty on automotive lead acid battery exported to India was rejected on March 21, 2001 by the Government of India (GOI) under the **de minimis** clause when former Bangladeshi Commerce Minister Mr. M.A. Jalil raised the issue with his Indian counterpart during his visit to India on March 13, 2001. Subsequently, the matter was dropped pending further investigation and Bangladeshi automotive battery manufacturers were allowed to continue exports to India under the preferential tariff allowed under SAPTA.[26]

3.2.7 India suspended the anti-dumping proceedings against Bangladesh under de minimis clause as because the share of Bangladeshi battery export to Indian market is found less than 1%.[27]

3.2.8 But on 9th April 2001, a notification issued by Indian Director General of Anti Dumping (DGAD) for public hearing latest by May 8, 2001.[28] Subsequently, the Indian government revived the proceedings in May 2001 and started sending a number of letters to Bangladeshi companies asking them to provide different technical and financial information about Bangladeshi companies. They were asking for different design related technical as well as financial information and also

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24 Rahman, Kawser (2001).
25 The Daily Star (2001), Indian Customs keeps harassing Bangladesh battery exporters, dated: 07.08.2001.
26 (i) Ibid & (ii) H.C of Bangladesh in India(29-03-2001); Letter written to the M/o Commerce, Dhaka, No. Com. 1(4)/ Tariff/ 2001.

27 The Daily Arthaneeti (2001), Lead acid battery export is under threat. Dated: 07.08.2001.
28 Bangladesh High Commission in New Delhi (2001), a letter no. com. 1 (4)/Tariff/2001, written to the M/o. Commerce, Dhaka; dated 19.4.2001.

wanted to have physical visit to RBL companies without having prior permission of GOB. Mr. Niaz, President BABMA also said that the GOB did not receive any official response or even acknowledgement from the Indian side although GOB frequently sent letters containing request to resolve the dispute in the light of SAPTA agreement. Former commerce minister Mr. M.A. Jalil sent a personal letter to the Indian Commerce Minister on June 21, 2001 with the request to settle the dispute in the line with the SAPTA agreement. Despite that GOB did not see any response from India.[29] Subsequently, it appeared from the Table-3 that battery export to India becomes nill in the year 2001- 2002.

3.2.9 On the other hand, on July 20, 2001 a consignment of imported batteries of Bangladesh origin was confiscated from a battery outlet in Guwahati of Assam on allegation of illegal import. Rahim Afrooz has about 350 dealers in India to market their product.[30]

3.2.10 Mr. Niaz also said that Indian customs officials seized a consignment of imported Bangladeshi batteries in India from a battery outlet in Gauhati, Assam on July 30, 2001 on charge of illegal import.[31]

3.2.11 Exporters are being harassed in the name of investigation by the anti-dumping authority of India. As a result, export of batteries from Bangladesh to India has declined. New Delhi so far did not respond to the repeated requests of Dhaka to resolve the issue in the light of SAARC/SAPTA understanding. The Anti-dumping Authority of India asked for more information, investigation and explanation on battery export from Bangladesh. The BABMA leaders met the concerned authorities in Dhaka and New Delhi seeking a solution to the problem, but their efforts were futile.[32]

3.2.12 On several occasions India gave only verbal assurances to Bangladesh side for solving the problem and on the other hand continuing the proceeding for the anti-dumping case.[33]

3.2.13 Mr. Niaz Rahim, President of BABMA said that the anti-dumping authority of India has taken a fresh attempt to investigate battery exports from Bangladesh.[34]

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[29] The Financial Express (07.08.2001), Battery exporters 'being harassed by Indians'.
[30] The Daily Independent (07.08.2001).
[31] The Financial Express (07. 08. 2001)

[32] The Observer (07.08.2001)
[33] The New Nation (07.08.2001).
34. The Daily Arthoneeti (07.08.2001), Lead Acid Battery export is under threat.

3.2.14 In the disclosure statement issued in November 2001 the DA determined that import of lead acid battery from Bangladesh were above the **de minimis** level, which was estimated in terms of **value, not in-terms of volume** ignoring the basic rule of determination of de minimis level of imports.[35]

3.2.15 On December 07, 2001 the Designated Authority (DA) notified the final finding where DA did not accept any information provided by RBL quoting deficiencies of information. Accordingly, the DA determined that the exporters from Bangladesh have not responded to the questionnaires within the prescribed time limits, have failed to provide the information called for and also have refused access to necessary information as requested by the Authority. Hence, DA considered them as **non-cooperative** and has made the determination on the basis **of best information available**. But DA used the total export value of the lead acid battery provided by RBL in order to estimate the de minimis level, ignoring the other related value.[36]

3.2.16 Then in December 2001 in a letter, Commerce Minister of Bangladesh Mr. Amir Khashru Mahmud Chowdhury requested to the Indian Commerce Minister Mr. Murasoli Maran that there is nothing dumping in this case and requested not to impose anti-dumping duty on Bangladeshi battery export to India. Due to the request made by Bangladeshi Battery producers and exporters, GOB requested the GOI not to take any anti-dumping measures against Bangladeshi Battery export to India. Commerce Minister of Bangladesh also mentioned that if there is any complain that may be resolved under SAPTA agreement. In response Minister for Commerce and Industries of India requested the Commerce Minister of Bangladesh to **ask RBL for price undertaking.**

3.2.17 The Indian Anti-dumping Department (IADD) complained against the largest Battery producer and exporter Rahim Afrooz that the IADD have not received proper cooperation from Bangladeshi exporters to work out the case on Battery export to India. But in this connection the Rahim Afrooz authority informed that they have supplied all the documents and information as and when requested by the Indian authority. So, the complain of non-cooperation is not correct rather it is a harassment to them.

3.2.18 It is informed that the Indian government has decided to impose high anti-dumping duty against Bangladeshi Battery import in India. The Indian M/o. Commerce has finalized their

35. Bangladesh Tariff Commission, A Brief for Chairman, Tariff Commission, para 7.

[36] Bangladesh Tariff Commission, A Brief for Chairman, Tariff Commission, para 8.

notification on December 07, 2001 in this regard. According to the notification, India will impose 135% tariff for importation of Bangladeshi Battery to India. The exporters of Bangladesh have expressed their deep concern that if India can implement this measure then they will take similar action on other Bangladeshi importing goods to restrict export from Bangladesh to India.

Table- 4
Anti-dumping Duty Imposed by India on Bangladeshi Battery

Type of Battery		Exporter/ manufacturer	Amount (US $ per Kg)
(a) Industrial		All exporters	3.192
(b) Automotive	(i) NMF	All exporters	2.532
	(ii) MF	All exporters	2.121
	(iii) Motorcycle	All exporters	3.930

Note: NMF and MF shall have the meanings "non-maintenance free" and "maintenance free" respectively.
Source: Vivek Prasad, Under Secretary to the Government of India; A Customs Notification, Notification No. 1/ 2002- Custom, dated 02.01.2002 (http://www.cbec.gov.in/cae/customs/cs-act/notifications/notfns-2k2/cs1-2k2.htm): **(Annexure-IV).**

3.2.19 At last the GOI has imposed world's highest rate of anti-dumping duty (131%) on battery export from Bangladesh to India, which has already been implemented on last Ist January, 2002 to restrict battery export from Bangladesh. As a result, battery export from Bangladesh to India is totally stopped. Consequently, Bangladesh has lost US$ 20 lakh to 30 lakh earnings from battery export annually.

3.2.20 Different sources said, the rate of additional anti-dumping duty imposed on Bangladeshi Battery is US$ 02.532/Kg. battery. According to the Table-4, the rate of additional anti-dumping duty imposed on Bangladeshi Battery is US$ 03.192/Kg for Industrial battery; US$ 2.121/kg and US $ 2.532/kg for Automotive MF and NMF respectively and US $ 3.930/kg for Automotive Motorcycle battery. The weight of a lead acid battery is from 7/8 Kg. to max. 30 Kg. Consequently, the imposed additional anti-dumping duty has appeared minimum 33% to maximum 107% on a battery. In this situation the duty on Bangladesh Battery export to India has appeared in total 64.21%. But as per tariff concession received under SAPTA agreement Bangladesh was getting the benefit of paying export duty at the rate of 38.33%. Now the total duty on exported battery has appeared minimum 56% to maximum 131%. It is impossible to export battery from Bangladesh to India by paying the high amount of duty.

Table- 5
Export Figure Conflict During the Period of Investigation

Export Figure Unit	Export Figure Provided by Bangladesh	Export Figure of Bangladesh Estimated by India
Battery exported in unit	37,399	2,75,480
Battery exported in value US$	7,28,325	6,10,228
Unit price in US $	19.47	2.22

Source: The Daily Janakantha, dated 07.08.2001

3.2.21 It is informed that, the GOI has imposed the anti-dumping duty through an investigation on the basis of arbitrary information, but totally ignoring the information given by Bangladesh Export Promotion Bureau (EPB). In the investigation, the IADD considers the battery exported from January 2000 to September 2000. According to Indian estimate, Bangladesh exported 2,75,480 unit battery valued US $ 6,10,228. But the Bangladesh EPB has given the actual information to IADD which was, during that period, Bangladesh exported 37, 399 unit battery valued US$ 7,28,325 (Table-5). But IADD did not consider the information given by Bangladesh EPB. Rahim Afrooz Battery Limited was the largest battery exporter. They are exporting their battery to 17 countries in the world. In this connection, Rahim Afrooz Battery Limited Officials Mr. Kazi Jabed Islam informed Janakantha that Indian authority imposed anti-dumping duty on the basis of false information by showing higher quantity of battery export and lower value of export. According to the Indian estimate, the price of a single lead acid battery has appeared from US $ 2.80 to 2.90. That is in Bangladeshi taka, it is Tk.180 only, which is impossible. No one will get a lead acid battery with this price nowhere in the world. The actual price of a single lead acid battery is minimum US $ 15 to 17. [37]

3.2.22 In April 2002, RBL filed an appeal to Customs, Excise and Gold Appellate Tribunal (CEGAT) of India. Hearing of the Appeal was on 22 July 2002. M/o. Commerce requested Bangladesh Mission in Geneva to give its comment about the merit of the case at DSB of WTO. The Economic Minister in his response gave a detailed analysis of cost and procedures of such disputes and recommends waiting for ruling of CEGAT, India.[38] Subsequently RBL lost the case in CEGAT.

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[37] Kaisar Rahman (07.01.2002); " India has imposed 131% anti-dumping duty on Bangladeshi Battery export" A report published in The Daily Janakantha.
[38] BTC, Brief for Chairman, para 14.

3.3 From the above actions and responses of the conflict, two vital points of consideration have surfaced out from the conflict:

(i) India has charged against Bangladesh for dumping batteries in the Indian market and they are going to settle the case by imposition of Anti-dumping duty under WTO rules totally ignoring the SAPTA Agreement.

- In response Bangladesh's view in this regard is that Bangladesh has not dumped the batteries to Indian market. However, if there is any complain that should be settled under SAPTA Agreement but not under WTO rules, because batteries export resumed through tariff concession received under SAPTA.

(ii) In any way India is interested to use the information in this regard only those are technically suitable and available to them. Bangladesh's exporters response is that India is not considering the information supplied by RBL from Bangladesh rather they have used their own information on arbitrary basis to prove the case as dumping.

IV. ANALYSIS OF TRADE CONFLICT UNDER SAPTA AGREEMENT

4.1.1 Having tariff concession from India under SAPTA agreement Bangladesh's battery export growth was continuing competitively. But the Indian producers who were enjoying import restricted un-competitive market for long naturally could not welcome the openness for competition and were suffering from false fear. India is trying to harass the import of battery in many ways. From the findings and analysis in the previous chapter, we can see the inner complain and causes against battery import for what the Indian producers are charging are the tariff concession which led to ease access, illegal export and smuggling etc. (Para 3.2.9 - 3.2.13 and Chronology Oct., 96). But consequently, they have made the charge of dumping. Dumping itself is not an illegal export. Dumping has different connotation. The inner causes exposed by the Indian producers in this regard and their anti-dumping action taken in this case is very much inconsistent. Consequently, Bangladesh has lost its export opportunity and has been depriving from export earnings and trade promotion. India could take the appropriate measure under SAPTA in case of Bangladesh rather they have taken the anti-dumping measure under WTO rules against Bangladesh. As the opportunity was created by SAPTA agreement, let examine the Indian initiative and Bangladesh's responses in the purview of SAPTA. In this matter we have to consider the point that India is a developing country and Bangladesh is a LDC.

4.1.2 Regarding the complain of dumping, Bangladeshi exporters and the GOB have responded that there was nothing dumping in regard of battery export from Bangladesh to India, rather they have been harassed in many ways by the Indian authority at the name of false complain of dumping lodged by the two Indian exporters EIL & ARBL.

4.2.0 Exporter's (BABMA) Views and Arguments Toward Conflict under SAPTA

4.2.1 BABMA has strongly opposed the complain of dumping and responded that there was nothing dumping in regard of battery export from Bangladesh to India. Exporters (BABMA) strongly argues that as the opportunity has been created under SAPTA and the inner causes of the problems understood from the actions and allegations by the Indian producers in this case, the problem must be addressed under SAPTA agreement. BABMA considers that the Article 1(3), 1(4), 1(6), 1(8), 1(11), 4,5,7,10,14,19,20 of SAPTA are directly applicable in this matter and the dispute arising in this regard must be resolved through consultation and dispute settlement procedure specified in SAPTA provisions at governmental level. And requested the Secretary, M/o. Commerce, GOB to initiate consultation process under Article 19 of SAPTA.[39]

4.2.2 BABMA requested the DGAD of India for consultation and dispute settlement under Article 14&19 of SAPTA. And also requests for an extension of 4 weeks time to detailed reply by BABMA that there has been no dumping. [40]

4.2.3 BABMA has placed their arguments as follows: [41]

(i) Bangladesh exports batteries to India having preferential tariff concession under SAPTA Agreement. Therefore, any commercial problem regarding the export of battery should be resolved under SAPTA agreement.

(ii) India has violated the SAPTA agreement, as India did not solve the complaint against Bangladesh under Dispute Settlement Mechanism of SAPTA.

(iii) BABMA has requested to take initiative to solve the problem under SAPTA.

4.2.4 President BABMA and Director RBL said that Bangladesh is not dumping any battery to India; rather Indian companies are trying to prevent access of Bangladeshi battery into Indian market. With ill intention, India has taken the false case. They have charged the case against such two Bangladeshi organizations those are not involve in producing batteries in Bangladesh and exporting batteries to India. BABMA has demanded for govt. initiative under SAPTA Agreement to resolve the case.

4.2.5 BABMA Referred Differential and Favorable treatment, Reciprocity and fuller Participation of Developing Countries (Decision of 28th Nov. 1979/L/4903) under WTO, SAPTA Agreement and Public International Law Obligation require that provisions for consultation and dispute settlement should be exhausted before proceeding for Anti-dumping case under WTO. On this ground BABMA requested the VC, EPB to take necessary step to resolve the matter through consultation under SAPTA.[42]

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[39] BABMA President's letter to Secy. M/o. Commerce, Dated: 31.1.01, Para 9 & last

[40] BABMA President's letter to VC, EPB, Dated: 27.01.01, Para 5; BABMA letter to DGAD of India, Dated: 14.02.01.

[41] BTC letter to the Secretary, M/o. Commerce, Dated: 20.02.200.

[42] BABMA letter to the Vice Chairman, EPB, dated 27.05.01

4.3.0 Government Views and Arguments Towards the Conflict Under SAPTA

4.3.1 Commerce Minister, GOB Mr. Amir Khashru Mahmood Chowdhury expressed his views in a letter on December, 2001 written to his Indian counterpart Mr. Murasoli Maron that there is nothing dumping in this case and requested not to impose anti-dumping duty on battery export to India from Bangladesh. Commerce Minister also mentioned that if there is any complain that may be resolved under SAPTA agreement. In response Indian Commerce Minister requested the commerce Minister of Bangladesh to ask RBL for price undertaking.

4.3.2 EPB of Bangladesh also considers that the case does not come under the purview of anti-dumping laws of WTO and it is not also in conformity with the SAPTA agreement and requested the BMG for their suggestions in this regard.[43]

4.3.3 Accordingly, after consultation with concerned officials at WTO, BMG also agreed with the views of BABMA regarding trade figure of Bangladeshi batteries exports to India quoted in the BABMA's report is indeed below the 'de minimis' under the AD agreement of WTO. And advised to take the matter with India under SAPTA.[44]

4.3.4 H.C of Bangladesh in India requested the Ministry of Commerce to provide relevant Anti-dumping laws under WTO and relevant rules under SAPTA to enabling them to have a through study into the subject.[45]

4.3.5 A Task Force has been constituted by M/o. Commerce, GOB to examine whether the initiatives of India violates the SAPTA Agreement and ADA of WTO, to observe the process of the anti-dumping proceeding, and to suggest a set of recommendation to protect the interests of Bangladesh's battery exporters.

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[43] i) EPB letter to Bangladesh H.C. in New Delhi, Dated: 05.01.01, and
ii) EPB letter to Bangladesh Mission Geneva, Dated:. 05.01.01.

[44] Bangladesh Mission, Geneva letter to EPB of Bangladesh, Dated: 19.02.01.

[45] HC of Bangladesh in India letter to M/o. Commerce, Dhaka, Dated: 08.02.01.

Task Force: [46]

i.	Chairman, Tariff Commission	Chairman
ii.	DG/Representative, EPB	Member-Secretary
iii.	JS (ITO), M/o. Commerce	Member
iv.	DS (Export-1), M/o. Commerce	Member
v.	Representative, FBCCI	Member
vi.	Representative, MCCI	Member
vii.	Representative, Concerned Exporters	Member

4.3.6 BTC has forwarded its opinion to the M/o. Commerce for their consideration through its letter dated: 20.02.01 as follows: [47]

(i) BTC argues that as per Article 15 of SAPTA any of the concession given under the agreement shall not be diminished or nullified, by the application of any Restrictive trade measure except the articles under SAPTA Agreement.

(ii) BTC also considers Article 19 of SAPTA that "Each contracting State shall accord sympathetic consideration to and shall afford adequate opportunity for consultations regarding such representations as may be made by another Contracting State with respect to any matter affecting the operation of this Agreement.

(iii) BTC also argues for Article-20, that any dispute that may arise among the contracting state regarding the interpretation and application of the provisions of this Agreement shall be amicably settled by the agreement between the parties concerned.

(iv) BTC refers Article-9 of SAPTA that a committee of participants shall meet at least once a year to review the progress made in the implementation of this Agreement and to ensure that benefits of trade expansion emanating from this agreement accrue to all contracting states equitably. The committee shall also accord adequate opportunities for consultation on representation made by any contracting state with respect to any matter affecting the implementation of the Agreement.

(v) BTC argues that avoiding anti-dumping initiative, India could take initiative through consultation under Article 14 of SAPTA Agreement if India aggrieved due to increase of battery

[46] M/o Commerce Notification on the formation of the Task Force, dated 27.02.01
[47] BTC letter to M/o Commerce, dated 20.02.01.

export from Bangladesh to India for tariff concession but India did not do that in this case. BTC argues that under the above circumstances, M/o. Commerce may consider whether any initiative may be taken under SAPTA Agreement.

4.3.7 Following opinion and arguments have been expressed in the first meeting of the Task Force, held on 22.03.01.

(i) JS (ITO) said that it should be clearly checked whether there is any scope to solve the problem under SAPTA. Director, EPB advised that the matter should be resolved under SAPTA Agreement but not to go for Indian Customs Rules or WTO rules. He said that having tariff concession under SAPTA Agreement Bangladesh started to export its battery from Bangladesh to India. He further said that as per Article-15 of SAPTA there is no scope to take any restrictive initiative that may nullify or diminish the benefits. Therefore initiative may be taken to resolve the matter under Article 14 & 15 of SAPTA Agreement.

(ii) Member (Research & Evaluation), BTC said that India has taken the problem as dumping but not as a tariff concession benefit, that's why India has gone for AD case. He said, it is mentioned in the Agreement that restrictive trade measure cannot be applied against any product that has given tariff concession under SAPTA Agreement. Imposition of antidumping duty is not a restrictive trade measure but it is a remedial trade measure. He further said that to prove the antidumping case baseless the proceeding should be responded properly otherwise trading interest might be effected due to the case.

(iii) Chairman of the Task Force expressed his concerned that Bangladesh should continue to face the proceeding till the exclusion of Bangladesh from the case. He also requested the M/o. Commerce and High Commission of Bangladesh to India to continue the government efforts.

4.3.8 After discussion, the following decisions have been taken in the meeting:

(1) BABMA will present a written request with necessary arguments to the M/o. Commerce to issue a Note Verbal to resolve the matter under SAPTA Agreement.

(II) BABMA will ensure continue representation to face the case and time to time inform the Task Force about the status of the case.

4.3.9 The following decisions have been taken in the meeting on "Anti-dumping proceeding by India against Bangladesh Lead Acid Battery exporters" under the Chairmanship of the Secretary, M/o. Commerce dated 13.06.01:

1. Chairman (Secretary M/o. Commerce), urged that the govt. should take necessary steps regarding the matter in the light of AD proceeding and it should be necessary to prevent the proceeding as per related SAPTA clause if possible.

2. As per recent visit to India with the Indian concerned officials, BABMA consultant Dr. M.M.H. Zoarder informs the meeting that India is not willing to resolve the matter under SAPTA Agreement. He also mentioned that the BABMA showed relaxation in responding by subsequent activities after having 'de minimis' consideration information in the notification of DGAD of India on last 21.3.01. As a result in the subsequent time (10.5.01) BABMA got an impression that, India is not going to consider Bangladesh under "de minimis' clause. To face the situation BABMA submitted the filled in "Exporters Questionnaire" on 31.5.01 to the DGAD authority.

3. In response, the Chairman wanted to know that what type of initiatives can resolve the matter quickly and effectively? Dr. Zoarder replied that SAPTA agreement would be the most effective measure to resolve the problem. BABMA President argued that, as because India is not interested to solve the problem under SAPTA Agreement, in that case legal fight would be the most appropriate.

4. In this regard, DS (ITO-1) presented a letter received from Director of AD authority, India and said that the Bangladeshi exporters did not send the filled in" Exporters Questionnaire" to the AD authority. And the authority requested in the same letter to send the said questionnaire by 06.7.01, which had already been submitted on 31.5.01 to DGAD. One of the Associations representatives informed the meeting that one of their importers in India has field a case in the Kolkata High Court against the decision of Indian Govt. The High Court passed a rolling against Indian govt. that the AD proceeding may be continue but no AD duty can be imposed till the disposal of the case. As a result, the association realizes that the case seems go in favor of our exporters.

5. Bangladesh Tariff Commission member Dr. M. Ali Rashid informed that there is minimum possibility to resolve the problem under SAPTA Agreement, because there are other three countries like Japan, Korea & China. In spite of that if the BABMA wants to resolve the problem

under SAPTA then BABMA may requests the Ministry with necessary arguments and if the Ministry asked, then BTC will take necessary action accordingly.

6. Chairperson strongly urged that to protect the interests of the exporters, the government is ready to cooperate at any level including SAPTA.

4.3.10 Considering the above discussion, following decisions have been taken in the meeting:

I. BABMA will forward a draft letter to the Ministry which will be signed by the Commerce Minister and will be sent to the Indian Commerce Minister where a light of direction will be stated how we can get relief from the proceeding.

II. BABMA will send another draft letter for the Secretary, M/o. Commerce that will be sent to the Bangladesh High Commissioner to India where a direction will be stated how the problem could be resolved under SAPTA.

III. Association will inform the M/o. Commerce through a copy of all of their correspondence to India.

IV. BTC Member Dr. Ali Rashid will work as a focal point regarding suggestions/action on the matter.

V. If it is considered that the problem can be solved under SAPTA then it will be done through DS (ITO-2) and if it is considered under WTO Agreement then it will be done through DS (ITO-1).

V. ANALYSIS OF THE CONFLICT UNDER WTO RULES

5.1.0 Exporter's (BABMA) Views and Argument Toward Conflict under WTO Rules

5.1.1 BABMA emphasizes that the market size of lead acid battery in India is 8.5 million pieces in the automotive sector. Batteries of Bangladesh origin exported to India during the period from January to December 2000 are only 1,07,487 pieces, the volume of export from Bangladesh to India is less than 1% of the total battery market of India.

5.1.2 BABMA has referred the paragraph 8 of Articles 5 of AD of WTO and has interpreted the rule as "exports less than 2% from any particular source is ***de minimis***". Hence the battery exported to India falls under de minimis provision of AD laws of WTO.[48] The study also founds that the above definition and interpretation of "***de minimis***" is not correct. It appears from the above definition and interpretation regarding the ***de minimis*** argument made by BABMA, that the BABMA has serious misunderstanding with the definition, analysis and interpretation of the paragraph 8 of Article 5 of ADA under WTO. Article 5.8 clearly states that *if the dumping margin* (not the export volume) *is less than 2%, expressed as a % of export price of the product, is called* ***de minimis*** or volume of dumped imports is negligible *generally when the volume of dumped imports from an individual country accounts for less than 3% of the imports of the product in question into the importing country is called* ***negligible import volume***.

5.1.3 Quantity of battery exports from Bangladesh to India is less than 1% of the demand in the market of India. Therefore, according to the Article 5, paragraph 8 of ADA of WTO, it is not desirable to take anti-dumping initiatives against Bangladesh due to de minimis ground.[49]

5.1.4 BABMA also emphasises that the total market size of automotive batteries in India is 8.5 million pieces calculated on assorted N50 as the standard size. The total export from Bangladesh to India during the period from January to September 2000 (investigation period) has been 55,000

[48] BABMA letter to VC, EPB, dated 27.01.2001. para 3&4.
[49] BTC letter, Dated: 20.02.01.

pieces calculated on assorted N50 as the standard size. Therefore, the export from Bangladesh falls under de minimis provision and no anti-dumping proceeding is maintainable in law or in practice.[50]

5.1.5 BABMA's submission was that the petitioners relied upon secondary sources for import statistics and made even the names of the Journal, which they relied upon, as "confidential". The AD Authority by accepting the contention of the petitioners on the basis of "confidential" sources, and not lifting the confidential status of the sources of import statistics and giving no opportunity to BABMA to challenge the figures has erred in law and in fact.

5.1.6 The petitioners did not file the application in prescribed forms, which is a statutory requirement.

5.1.7 **Like Product:** Lead-acid battery exported to India from Bangladesh fall under HS code 8507. 'Like product' means "identical product', "alike in all respect", and can be substituted in commercial transaction and in practical use. Although all types of lead-acid automotive battery fall under the same HS code, each type cannot be substituted in commercial transaction and in practical use. A motorcycle battery and a 13 plates battery can not be substituted. For all practical purposes each type of lead-acid battery is a separate "product". Identification of the "product" and "like product" is important for the purpose of normal value, export price, determination of dumping, injury and threat to injury. The AD Authority has not made this classification. Rather they have accepted the argument of the petitioners that all types of batteries should be amalgamated into one category of lead-acid battery by calculating the lead content of the batteries and weight.[51]

5.1.8 Product manufactured by Exide & Amara are exclusively under product code No. 8507.1000 and 8507.2000. The Excise assessment of the petitioners will also confirm the same. But the petitioners have considered other classifications form 8504, 8506 and also other sub-heading in 8507, that is electric transformers, transistors, torch, primary cells, button cells for quartz watch and various items. The petitioners defined the product under 32 HS code heading and sub-headings including dry cell, lithium, nickel cadmium, lead-acid and all other possible types of

[50] BABMA letter No. NR/BABMA/81/2001, dated 16.02.01.
[51] BABMA letter to DGAD, India No. NR/BABMA/18/2001, Dated: 31.5.01.

batteries as "product". Which are not commercially substitutable for lead acid automotive batteries.

5.1.9 **Assessment on the basis of weight:** The AD Authority has determined to proceed on a weight basis in the proceeding. The standard practice in the battery industry is to classify lead-acid battery on the basis of types of batteries, after known as the specifications, which includes dimension, number of plates, volt, ampere hour (AH) capacity. The specifications vary depending on AH rating, voltage, discharge characteristics and discharged period. Hence, to compare two batteries the AH capacity, voltage, discharge period, discharge characteristics, charging characteristics, life of battery, climatic condition, nature of use have to be taken into consideration. The price of battery also varies according to specification. Cost of kg of automotive battery weight falls as the size (capacity) of a battery increased. Thus, prices per kg of such battery also reduce. This is universal.

5.1.10 Quantity and Export Price of Batteries: The volume, value and export price as shown by the petitioners in the petition does not reflect the true volume, value and export price of battery export from Bangladesh to India (Table- 4). BABMA also demands that the volume of lead-acid batteries exported form Bangladesh to India is insignificant compared with demand in the Indian market and falls under de minimis rule.

5.1.11 List of Exporters: Two named exporters, mentioned in the petition by Exide, are not manufacturers of batteries and not members of BABMA. Only manufacturer and exporter of lead-acid battery from Bangladesh to India is RBL.

5.1.12 Export Price & Dumping Margin: Calculation of export price $ 2.05 and dumping margin 924.05 by the AD Authority is completely and totally denied by BABMA. BABMA strongly asserts that RBL the only manufacturer and exporter has never sold battery at dumping price in the Indian market. A comparison of export price of EIL to Bangladesh from India and RBL's export price to India from Bangladesh is given in Table- 6 which shows that EIL's export price is lower than those of RBL's export price.

Table- 6

Comparative Table of Export Price of EIL and RBL (VOLTA)

Battery Type	**EIL's Export Price to Bangladesh from India (US$)**	**RBL's Export Price to India from Bangladesh (US$)**
32B20R (NS40)	9.50	10.95
NS40Z	11.35	12.09
NX120-7	22.50	21.50
N70Z	20.50	20.75
48D26R 6V9R (N50)	13.40	13.75
55D26R VX507 (N50Z)	15.15	18.22

Source: BABMA letter No. NR/BABMA/81/2001, dated 16.02.2001, written to DGAD.

5.1.13 **Injury to Domestic Industry**: Both the Indian company is enjoying growth and prosperity. Petitioners failed to prove the injury, lost market share, loss of contracts and to show causal link for injury & threat to injury from battery export from Bangladesh. [52]

5.2.0 Government Views and Arguments Towards Conflict Under WTO Rules

5.2.1 BTC has prepared a brief opinion and argument on the conflict for its Chairman's consideration, which are as follows: [53]

i. Most of the vital information and number of vital companies have been kept confidential by the petitioners in their petition, as well as in the "Initiation Notification" by the DGAD Authority. As a result the right of the oppositing interested parties to challenge the information and make meaningful submissions to the Authority have been effected.

ii. Two Bangladeshi Companies - Techno link and Amaz-K Techno trade were listed by the petitioners as known exporters of Bangladesh in the petition, although these two companies were never been involved in export of lead acid batteries. Subsequently, in Feb. 2001 the two companies informed the designated authority of India in written that they were not involved in exporting lead acid battery to India. Simultaneously, BABMA through the GOB informed the DA

[52] BABMA letter to DGAD of India, No. NR/BABMA/18/2001, Dated: 31.05.01.

[53] BTC, Brief for the Chairman on Antidumping case against the Imports of lead acid battery into India from Bangladesh.

that only RBL is involved in battery export to India. The investigation period was determined from January 01 to September 30, 2001.

iii. The Preliminary findings were notified on 21 March 2001. In case of Bangladesh, the findings were found below 3% of the total import of lead acid battery. However, the DA continued to investigate despite the fact that the investigation was supposed to be terminated as per rule on anti-dumping of WTO.

iv. On 31 May 2001 BABMA on behalf of RBL submitted the replies to the questionnaire required by the DA. However, the DA argued that the replies were not complete and asked for additional information such as financial statement, profit and loss accounts, balance sheet, annual report, legal form of the company, details of owners/shareholders, information on the incentives given by the govt., transaction wise details of sales in the home market with a break-up in terms of types of batteries specification details of the batteries being exported details cost of production and also requested for spot investigation of the company. However, BABMA requested for the consent of the GOB for spot investigation.

v. Analysis of the investigation conducted by the designated authorities of India shows that the DA has acted inconsistently with the WTO rules in many instances as per outline points of Annex-I of ADA of WTO.

vi. Determination of the DA about the non-cooperation of the Bangladeshi exporter has some valid ground. These are:

a. All other exporters except the Bangladeshi RBL submitted all information requested by the DA.
b. The information provided by the RBL Bangladesh was partial and could not be reconciled because of lack of relevant information. Moreover DA alleged that RBL did not furnish the information in time.
c. The DA requested for spot verification. But the exporter refused the request misinterpreting the provision and citing that the GOB should be informed first.

However, it may be noted that, the question of non-cooperation comes after the violation done by the DA with regards to non-termination of investigation against Bangladesh after determining that the import from Bangladesh was less than de minimis during the investigation period. Moreover, as per the Article 6.8 of AD Agreement of WTO the DA has the authority to make the final determination on the basis of available information. However, the DA did not disclose the information available to them.

vii. There are some demerits of the case for Bangladesh point of view. Nevertheless, there was a gross violation of the Agreement from Indian side, which could be prove without major difficulties especially the points relating to de minimis clause. Hence, it seems that Bangladesh has substantial chance to win the case in the WTO. However, the points raised in Annexure-1of ADA could be verified by an expert from the WTO Technical Cooperation Division or Law Advisory Centre, in order to have assessment as to whether we have merits in the case.

viii. There is a cost involvement in a dispute in the WTO. However, creation of Law Advisory Centre, the cost has reduced substantially for the LDCs as it offer legal services at 90% discount. Annexure-2 of WTO gives detail about the dispute settlement process and associated cost. As per BMG report, the cost @ 90% discount has appeared US $ 11,000 plus.

ix. It is undeniable that Bangladesh does not have expertise in dealing with the dispute and even in anti-dumping cases. We do not have the legal experts in this area. Accordingly, if Bangladesh decides to go for a dispute, it should go with limited expertise and rely on the legal expert to be provided by the Law Advisory Centre. However, it should be taken into consideration that in the dispute settlement process some officials would be able to enhance their expertise.

x. BTC further opined that India has initiated anti-dumping case against Bangladesh, China, Japan and Korea. Therefore, the proceeding may not be suspended only because of Bangladesh. The concerned exporters may be requested to submit their reply of the information notice within the stipulated time. If necessary, exporters may seek time extension for reply under sub para 1.1 of Article-VI of ADA. If there is no step, authority may impose provisional AD duty during investigation.[54]

5.2.2 A new provision requires the immediate termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is de minimis (which is defined as less than 2%, expressed as a % of the export price of the product) or that the volume of dumped

[54] BTC, Brief for the Chairman on anti-dumping case against the Imports of Lead Acid Battery into India from Bangladesh.

imports is negligible (generally when the volume of dumped imports from an individual country accounts for less than 3% of the imports of the product in question into the importing country. [55]

5.2.3 Views of Tariff Commission for consideration to the M/o. Commerce about AD Case

Tariff commission has given the following observation/opinion regarding the problem as per Initiation Notification by India:[56]

(i) Summary of fact of the Notification is very short. In the Notification infect no information has been supplied on Normal value, Export Price, Margin of dumping, domestic industry and injury.

(ii) As per paragraph 5 of Article 5 of ADA under Article VI of the GATT-1994 says that after having properly documented application, the exporting member countries should be notified by the investigating authority before initiation of investigation. Rules 5.5 of Indian Customs Tariff Rules-1995 have also the same provision. But, whether the rule has been followed or not in this case. No evidence has been found regarding the notification.

(iii) As per Article-6, Para 1 of ADA, after initiating the proceeding investigating authority should provide a Notice of Information to all the interested parties. But it is informed through consultation with the exporter of Bangladesh that they have not received any Notice like this. As per Article-12 of ADA, the investigating authority should notify the govt. of the exporting country and all the concerned interested parties. In this case, it is not confirmed whether the govt. of Bangladesh and the exporter have received the notice. Moreover, at the time of initiating the investigation as per sub-para 6.1.3 of ADA, authority should send the full text of the complain to the exporters and govt. of the exporting country as per Article 5, Para 1. It is not known to us whether the authority has sent the full text of the complaint to the exporters or govt. of Bangladesh.

(iv) However, Article 5, paragraph 8 of ADA states that if dumping fall under de minimis or if the import of dumped product is minimum then anti-dumping initiative need to be stopped. Here, de minimis is defined if the margin of dumping is less then 2% and the minimum import is defined if the import of dumped product is less than 3%. According to the Tariff Commission, it will not

[55] Legal texts: The WTO Agreement, Article VI, p10.

[56] BTC letter to the M/o Commerce; dated 20.02.01; and Proceeding of 1st Meeting of the Task Force.

be logical to demand de minimis as per petition. Because, in that case, complain of dumping would be recognized. But, if the total import of like product from different countries exceed 7% then minimum import argument will not be applicable. If sufficient data support can be found then there is provision for relief in spite of dumping in case of minimum import and our argument is that without dumping we have done minimum import.

5.2.4 In determining domestic industry, the AD Authority did not investigate whether Amara Raja is importing batteries at a dumping price. Article 4.1 (i) of the WTO Agreement on anti-dumping states when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers".

5.2.5 EPB also endorses the opinion and argument of BABMA that the export of lead acid battery from Bangladesh to India do not come under the purview of anti-dumping laws of WTO in the present circumstances. And requested the Economic Minister in Geneva Mission of Bangladesh and Commercial Counselor, Bangladesh High Commission in India to inform their opinions on this case considering the WTO rules on Anti-dumping.[57]

5.2.6 In response BMG has also agreed with the views of BABMA that the export figure quoted in the report is below the de minimis level as per ADA of WTO.[58]

5.2.7 In response to the letter from the M/o Commerce, No. MOC/ITO/AEA/1(8)/96/299, dated 05.02.2001 regarding anti-dumping proceeding, the Bangladesh High Commission in India informed the Ministry of Commerce, Dhaka that the Mission has made a request to the government of India to exclude batteries exported by Bangladesh to India from the purview of anti-dumping investigation in the light of the arguments put forwarded by BABMA. Moreover, the High Commission requested the M/o Commerce, Dhaka to provide them relevant anti-dumping laws under WTO and relevant SAPTA rules to enable the High Commission to have thorough study into the subject matter of the case.[59]

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[57] EPB Fax message to Geneva No. EPB/PP/ITO/WTO- Anti-dumping/2001/381; dated 05.01.2001.

[58] Economic Minister, Permanent Mission of Bangladesh in Geneva; A letter to the Director EPB; No. BMG/WTO-26; dated 19.02.2001.

[59] Bangladesh High Commission in India; Letter to the M/o Commerce, Dhaka; No. Com. 1 (4), dated 08.02.01.

5.2.8 The DGAD of India informed the High Commission of Bangladesh in India that, it appears from the preliminary finding (issued on 23.03.01) that the battery exported from Bangladesh to India accounts for less than 3% of the value/volume of import, therefore the import from Bangladesh is ***'de minismis'***. [60]

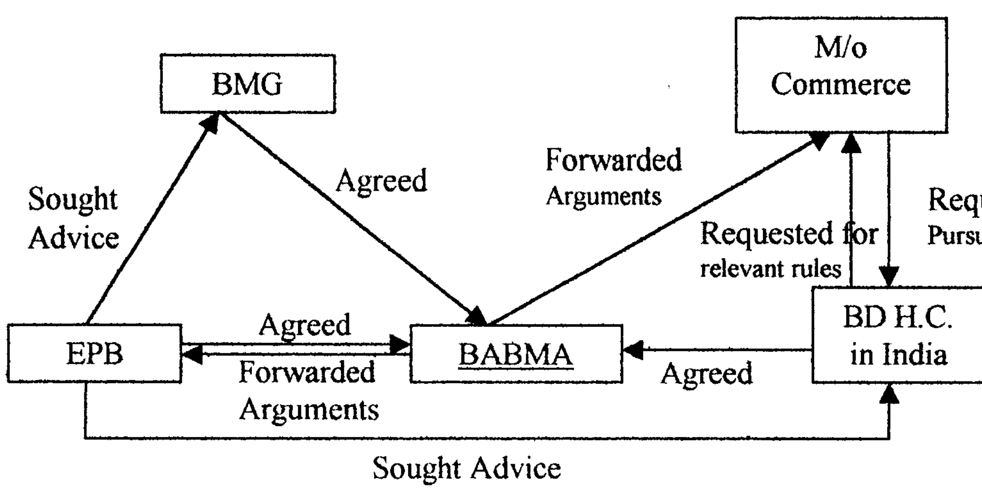
5.3.1 In a very informal direct consultation with top officials of the M/o Commerce and Bangladesh Tariff Commission regarding the line of thinking in pursuing the trade conflict at DSB of WTO, three important points of consideration have been explored.

Firstly, what ever might be the merit of the case, legal expenses at WTO is an important factor for a LDC country like us, because we don't have legal experts by our own. If the legal expenses are much higher than the conflicting trading interests then it would be difficult for us in economic sense to go for legal fight at the DSB of WTO.

Secondly, India is an important trading partner to Bangladesh. We have many areas of mutual interests. If we go for legal fight at the DSB of WTO, then what would be the probability of loosing interests in other areas due to retaliation effect, that point also need to be considered.

Thirdly, to go for legal fight for our legitimate interests, we have to think the hegemony power of the opposition country.

Action Flow Chart



[60] High Commission of Bangladesh in India; Letter to the M/o Commerce, Dhaka, dated 29.03.2001.

VI. MARIT OF THE CASE UNDER SAPTA AGREEMENT

6.0 Merit Analysis

6.1.1 It is understood from the previous findings that the Indian producers have perceived the problem of battery export which is originated from illegal export, ease the export, and smuggling; then India could take any initiative under SAPTA to solve the problem. The study also realizes that India has examined all the possible measures under SAPTA to have a meaningful remedy of the problems on behalf of India. Having no other alternatives they have taken the measure under WTO rules. Because, as far as Bangladeshi battery export is concerned it is very difficult to take any meaningful steps by India in favour of them under SAPTA, as Bangladesh strongly argues that there was nothing dumping in regard of batteries export to India.

6.1.2 Imposition of anti-dumping duty by India ignoring the demand of Bangladesh that there is nothing dumping in this regard is clearly a trade dispute between Bangladesh and India. Bangladesh is pushing for settlement the dispute under SAPTA Agreement and India is following the WTO rules by ignoring SAPTA.

6.1.3 Let us examine the ministries and concerned organizations views and positions in handling the trade dispute under SAPTA agreement.

(i) Minister for commerce Mr. Amir Khashru Mahmud Chowdhury expressed his views that there is nothing dumping in regard of battery export to India from Bangladesh and requested his Indian counterpart not to impose anti-dumping duty on Bangladeshi battery; if there is any problem that may be resolved under SAPTA Agreement (Para 4.3.1).

(ii) Secretary M/o. Commerce urged that it should be necessary to prevent the proceeding of the case as per related SAPTA clause if possible (4.3.9 (i)).

(iii) Chairman of the Task Force has expressed his concerned to continue to face the proceeding and requested M/o Commerce and High Commission of Bangladesh in India to continue the government efforts in this case. He has also taken a decision that BABMA will present a written request with necessary argument to the M/o Commerce to issue a note verbal to resolve the matter under SAPTA Agreement and BABMA will ensure continue representation to face the case. (iii. of 4.3.7, and 4.3.8).

(iv) Joint Secretary (ITO), M/o. Commerce has expressed his view that it should be clearly checked whether there is any scope to solve the problem under SAPTA (i. of 4.3.7).

(v) High Commission of Bangladesh in India has asked for relevant rules under SAPTA & WTO for their study to face the case. (para 4.3.4).

6.1.4 From the analysis of the above views and positions expressed by different high officials of the GOB, it appears that lack of institutional and professional support to the ministry and government in terms of expertise, arguments and assessing the merit of the case in favour of the interests of the country are very critical. The Ministry had to ask the exporter BABMA to support the Ministry with their expert arguments in favour of the case and accordingly Ministry would issue a note verbal. Lack of confidence in putting the arguments by concerned officials in the government under Articles of SAPTA and dependence on BABMA for arguments have been prominently exposed from the above views and positions.

6.1.5 The supporting institutions and organizations other then ministry concerned in this case are BTC, EPB, BABMA, RBL.

6.1.6 BABMA, BTC, EPB, RBL and the M/o Commerce all have referred Article 1(3), 1(4), 1(6), 1(8), 1(11), 4,5,7,10,14,15,19,20 of SAPTA Agreement as relevant to the case.

6.2.1 The study examines the case under SAPTA agreement. BABMA, BTC, EPB, M/o. Commerce all have referred Article-20 of SAPTA is relevant for consideration to resolve the conflict. Article 20 of SAPTA agreement is about **"Settlement of Disputes"** which clearly states that *"any dispute that may arise among the contracting states regarding the interpretation and application of the provisions of this agreement or any instrument adopted within its framework shall be amicably settled by agreement between the parties concerned. In the event of failure to settle a dispute, it may be referred to the committee by a party to the dispute. The Committee shall review the matter and make a recommendation thereon within 120 days from the date on which the dispute was submitted to it. The committee shall adopt appropriate rules for this purpose".*

6.2.2 From the previous analysis and findings regarding applicability of Article 14,15,20 of SAPTA, it appears that the concerned persons involved in this matter from BABMA, BTC, EPB RBL and M/o Commerce have a misunderstanding about the meaning and interpretation of the Article 20 of SAPTA in this case.

6.2.3 The study perceives that as far as dumping charge is concerned, it is not a **provision** of the SAPTA agreement or not any **instrument** adopted within its framework. There is nothing about ***dumping*** in the SAPTA Agreement. In the WTO rules, dumping has been considered as "***unfair***' trade practices. There is nothing about unfair trade practices in the SAPTA agreement also. Therefore, **dumping as unfair trade practices is not a matter of interpretation and application of any provision of SAPTA Agreement or any instrument adopted within its framework**. Therefore, the dispute may not be covered by Article-20, and Article-20 of SAPTA is ineffective in this case. Moreover, the Anti-dumping measure is unilateral remedy subject to fulfill the procedural requirements and India has also applied the measure unilaterally. This can be taken to the WTO dispute settlement only subject to failure by India to respect either the subsequent prove or procedural requirements, which may be the basis for invalidation of the anti-dumping measure taken by India but not under Article 20 of SAPTA.

6.2.4 If the dispute were on non-compliance or non-application of the tariff concession given by India for battery export from Bangladesh to India then it would be a matter of SAPTA Agreement and was covered by Article-20 of SAPTA. But very consciously India did not go on that way. Very technically and understanding the games of the rules India has imposed the charge of dumping. The study also perceives that considering the gaps of the rules under SAPTA Agreement, Bangladesh also did not take any meaningful formal step to go to SAPTA for settlement the dispute till the date. Rather Bangladesh has tried to solve the problem amicably through the political process, at ministerial level which were possible at one time for a short period in March 2001. The present government is also trying to solve the problem through the political process by the ministerial level, but no significant responses yet been received from Indian side.

6.3.1 BABMA, BTC, EPB and M/o Commerce have referred Artilcle-14 of SAPTA also. Article-14 of SAPTA Agreement under "***Safeguard Measures***" states that *"if any product, which is a subject of a concession with respect to a preference under this Agreement, is imported into the territory of a contracting state in such a manner or in such quantities as to cause or threaten to cause, serious injury in the importing contracting state, the importing contracting state concerned may, with prior consultations, except in critical circumstances, suspend provisionally without discrimination, the concession accorded under the Agreement."* Dumping can be taken into consideration by the wards *"in such a manner"* stated in the Safeguard Measures under Article-14 of SAPTA. As per Article-14, India could easily suspend the provision of concession accorded under the Agreement if they could prove "serious injury" due to dumping of battery from

Bangladesh. As Bangladesh demands strongly that there is nothing dumping in case of battery export to India and, assuming that as because India could not be able to prove "serious injury" that's why India did not go on that line. And charged for dumping under WTO rules but did not suspend the concession given under SAPTA. Because, volume/value of import from Bangladesh is very negligible compared with Indian market, which is impossible to prove that export is creating "serious injury" to the Indian producers. Therefore, Article-14 can't be charged against India in this case.

6.4.1 As a LDC, Bangladesh has privileges to have special consideration in application of safeguard measures by India under 1 (e) of Article-10 of SAPTA. Most probably considering this provision of special consideration, India did not go for suspension of the concession. But technically they have imposed the charge of dumping, by which India has achieved the same effect on battery export from Bangladesh to India. As a result sustainability of battery export from Bangladesh to India has been affected, which has nullified 1(d) of Article-10 under SAPTA Agreement in real sense. Therefore, in this case, India can be charged for non-compliance of 1(d) of Article 10 under SAPTA.

6.5.1 In Article-3 of SAPTA, four principles have been stated by which SAPTA shall be governed. Principle (c) clearly states, *"the special needs of Least Developed Contracting States shall be clearly recognized and concrete preferential measures in their favour should be agreed upon"*. India did not consider this principle in applying AD measure under WTO rules against Bangladesh. This might be another violation of SAPTA by India.

6.6.1 In Article-6 of SAPTA on additional measures for LDCs has been stated in taking advantage of potential benefits of SAPTA. In Annex-1 of SAPTA Agreement, Additional measures in favour of Least Developed Constructing States have been stated. The additional measure (d) of Annex-1 of Article-6 of SAPTA clearly states, *"the other contracting states should support by institutional and other positive measures to facilitate imports from Least Developed Contracting states into their own market"*. In the case of battery dispute between Bangladesh and India, in spite of Bangladesh demands that there was nothing dumping regarding battery export from Bangladesh to India. India did not consider the additional measure in favour of Bangladesh as a LDC by taking positive measure to facilitate import from Bangladesh to India, rather they have taken such measure which has created trade restricting affect in real sense on Bangladeshi

Battery export to India, which is a clear-cut non-compliance of Annex-1(d) of Article-6 of SAPTA by India in favour of Bangladesh as an LDCs.

6.7.1 Para 1 of Article-10 states that *all contracting states shall provide wherever possible, special and more favorable treatment exclusively to the Least Developed Contracting States.* The Indian action in the battery case is totally inconsistent with *"special and more favorable treatment"* to Bangladesh as a LDC rather India considered Bangladesh in parallel to China, Japan and Korea. Moreover, Indian step totally nullifies the sub para (d) of para 1 of Article-10 in maintaining reasonable levels of sustainable battery export to India from Bangladesh. Because, the battery export has been affected totally by Indian steps in this regard.

6.7.2 India has also denied sub-para (e) of Para 1 of Article-10 of SAPTA the special consideration of export from LDCs in the application of safeguard measures.

6.8.1 Maintenance of the value of concessions has been stated in Article-15 of SAPTA. The Article states that *"any of the concessions agreed upon under this Agreement shall not be diminished or nullified, by the application of any measures restricting trade by the contracting states except under the provisions as spelt out in other Articles of this Agreement".* Here, India did not **diminish or nullify the concession** by the application of any trade restricting measure. **Still the concession is prevailing**. But India has imposed the charge of dumping and in response they have imposed anti-dumping duty, which is ***not a trade restricting measure*** but a ***remedial trade measure*** by which India has gained same trade restricting effect on Bangladeshi battery export to India. As per Article-15, agreed concessions can be diminished or nullified under the provisions as spelt out in Articles 13,14,17,18 together with Article-10 and Annex-1 of Article-6 of SAPTA Agreement. But, India did not apply any of them in this case. Member (Research & Evaluation) of Bangladesh Tariff Commission rightly perceived the point (Para 4.3.7-ii, P.26).

6.8.2 India has imposed anti-dumping measure in response of dumping by Bangladesh but they did not **diminish or nullify the concession**. The concession is still valid. Therefore, the Article-15 will not be an effective one in favour of Bangladesh to cover the measure of imposition anti-dumping duty by India, which has same trade restricting effect on Bangladeshi battery export to India.

6.8.3 Following an anatomy exercise of the Article-15, we can set the following three questions:

Table-7: Anatomy of the Article-15 of SAPTA in terms of Satisfying Condition for Violation

Questions	**Necessary answers for violation of Article-15**	**Real Answers in this case**
Question No.1: Is the measure of anti-dumping duty (applied in this case) out of the provisions spelt out in other articles of this Agreement such as, Article 13,14,17,18 and together with Annex-1(d) of Article 6 and Article 10 (d) & (e) ?	Yes	Yes (There is nothing about dumping in the SAPTA Agreement)
Question No.2: Is the measure has created trade restricting effect on battery export?	Yes	Yes
Question No. 3: Whether India has diminished or nullified the concession by the application of the measure?	Yes	**No** (India did not diminish or nullify the concession. Still the concession is valid)

6.8.4 If all of the three questions from Table-7 can be answered **'Yes' simultaneously** in real situation then the charge of violation of Article-15 of SAPTA may be raised. The answer of the Questions No. 1&2 significantly satisfy the charge of violation of the Article-15 against India but the answer of the Question No.-3 rather does not satisfy the charge of violation of the Article-15 by India. So, in this case Article-15 cannot be applied against India for safeguarding our interest.

Merit Statement

6.9.1 Therefore, the Articles of SAPTA specially Article 14, 15, 20 which referred by concerned organizations and ministry in pursuing the case will not be so much effective and strong arguments in protecting our trading interest in this case. Several times BABMA requested the GOB to take initiative to resolve the problem under SAPTA. But in real sense no formal initiative has been taken by the GOB for SAPTA consultation. As per SAPTA Agreement, there is no reason for India to go to SAPTA consultation for this case. Because it has appeared from the study that India has very carefully considered all the provisions under SAPTA by which they can take appropriate and meaningful measures to resolve the problem under consideration in favour of India, but failed. Then India has taken the initiative under WTO rules. As because India has charged for dumping against battery export from Bangladesh and in response Bangladesh is demanding that they are not dumping the batteries into India, but due to Indian anti-dumping action on the basis of the false complain, battery export from Bangladesh has been affected.

Which is same as trade restricting effect. In this situation as a Least Developed Contracting State Bangladesh may go for SAPTA consultation to protect its privilege and special consideration under Annex-1(d) of Article-6 of SAPTA for *"other positive measures to facilitate imports from Bangladesh into India"*; and Article 10(d) &(e) for achieving reasonable levels of sustainable battery export by Bangladesh and special consideration in favour of Bangladesh in the application of safeguard measures by India. Therefore in this case Bangladesh can go to SAPTA against India for the charge of violation of the Annex-1(d) of Article-6 and Article 10(d) & (e) of SAPTA Agreement and non-consideration of Bangladesh as a LDC. Before that, Bangladesh needs to examine the case how strongly they can negotiate the case with arguments in terms of respective articles of SAPTA mentioned above.

6.10.1 As because, Bangladesh is demanding that they are not dumping any battery to India and no positive response were found from India, it is better to prove Indian demand of **dumping invalid** at the **Dispute Settlement Body (DSB)** of WTO. And simultaneously Bangladesh needs to pursue the matter through the political & diplomatic channels under ministerial level very carefully to have meaningful resolution of the trade conflict with India.

VII. MERIT OF THE CASE UNDER WTO RULES

Merit Analysis

7.1.1 Dumping is the main issue in this case under WTO rules. Dumping itself is not prohibited, but its occurrences entitle members to have recourse to certain anti-dumping measures. This anti-dumping measure are available only if the dumping causes or threatens material injury to a domestic industry of the importing country, or retards in a material way the establishment of such an industry. The anti-dumping agreement regulates the circumstances on which a member state may resort to anti-dumping measures-particularly to ensure that the anti-dumping response itself does not act as trade barriers.[61]

7.1.2 The Agreement on Implementation of Article VI of the GATT 1994 (the "AD Agreement") governs the investigation, determination and application of anti-dumping measures by Members of the WTO. Anti-dumping measures are unilateral remedies which may be applied by a member after an investigation and determination by that member, in accordance with the provisions of the AD agreement, that an imported product is **"dumped"** and that the dumped imports are causing material injury to a domestic industry producing the like product.

7.1.3 The AD Agreement sets forth certain substantive requirements that must be fulfilled in order to impose the anti-dumping measure, as well as detailed procedural requirements regarding the conduct of anti-dumping investigations and the imposition and maintenance in place of anti-dumping measures. A failure to respect either the substantive or procedural requirements can be taken to dispute settlement and may be the basis for invalidation of the measure.[62]

7.2.1 To invalidate the Indian initiative, it is essential to check the total actions and procedures the DA of India have followed in this regard. Article 2 of AD Agreement of WTO contains detailed provisions governing the calculation of normal value; export price, and element of fair comparison that must be made.

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[61] Asif H. Qureshi, WTO P.30.

[62] Internet: Anti-dumping & ADP: Dumping in the GATT/WTO, P.2.

7.3.1 Let us examine the case in terms of Article 2 of AD Agreement of WTO.

	WTO Rules to be followed*	Procedures followed by India
General Rule: ADP/ Determination of normal value	1. **Determination of Normal value**: 1.1 **General Rule**: The **normal value** is generally the price of the product **at issue**, in the **ordinary course of trade**. If there are sales in the domestic market. 1.2 As because product is selling in the domestic market (exporting country market), so determination of **"ordinary course of trade"** is important. 1.3 **Determination of ordinary course of trade**: One of the bases on which countries may determine that sales are not made in the ordinary course of trade is if sales in the domestic market of the exporter are made below cost. Say for example: Cost of Production = A. Sales price at the market of exporting country = B. Sales in the ordinary course of trade will be satisfied if **B>A**. **In that situation normal value would be generally the price of the product at issue.**	To calculate the normal value India has used the **constructed cost of production method** in case of Bangladesh based on international price of the major raw material (lead). Three types of batteries exported from Bangladesh to India and their lead consumption, prevailing prices of lead per MT have been considered. But all the figures of calculation were kept confidential. India found that the average CIF export price from Bangladesh for various batteries is significantly below even the cost of lead required for producing these batteries. It is thus evident that the exporters in Bangladesh are not even recovering their raw material costs. Cost of production is therefore, an appropriate basis for determination of normal value on this account alone. Therefore, normal value in Bangladesh may be considered on the basis of estimates of cost of production. The normal value in case of Bangladesh thus comes to at least (confidential) per battery. India has collected the prices of various batteries in the domestic market of Bangladesh also.

* Internet source on Determination of Normal Value (Article-2 of VI, AD Agency).
Dumping in the GATT/WTO.

7.3.2 **Bangladesh Situation:** Bangladesh is also selling the exported batteries in the domestic market (Table-8, 9, 10). Table-8 reveals that the unit-selling price (ex-factory) is greater than the respective unit cost of production (Ex-factory cost) in the entire 11 category of batteries. Therefore, as per WTO rules the sells are made in **"Ordinary course of trade"** and the amount of sells in the domestic market is also significant (Table-9, 10). Therefore, in this case normal value would be the price at issue i.e. **unit selling price (ex-factory)** in the ordinary course of trade. Therefore, it is clear, that India has **violated Article-2** of AD Agreement in following the procedural requirement in calculating **Normal Value** of the product in this case.

Table-8: Sales Price Structure for Domestic Market Sales in Bangladesh

(per unit)

Product Grade	Ex-factory cost $	Net profit/loss before tax	Unit selling price (ex-factory) (Normal value)
NS40	9.32	1.20	10.52
NS40Z	10.56	1.04	11.60
N40	11.49	1.61	13.10
NS60	13.07	2.22	15.29
N70	16.78	5.89	22.67
N70Z	18.72	4.66	23.38
N100	23.27	4.03	27.30
N120	28.13	6.18	34.31
N150	33.16	8.99	42.15
N200	39.44	12.72	52.16
N200S	37.45	12.48	49.93

Table-9: Export to India & Home Market Sales

Product	Period	Export to India				Sales in Home Market*				Prod. cost $ /Unit
		Unit	Quantity (in Kg.)	C&F/ Value ($)	Rate/ Unit $	Unit	Quantity (in Kg.)	Sales value $	Rate/ Unit $	
Automotive Battery	Jan. to Sep 02	37,399	539,361	738,324.61	19.47	99,640	2,065,942	2,780,979.74	27.91	24.35
Motorcycle Battery	Jan. to Sep 02	16,804	23,989	61,420	3.66	51,673	-	1,99,027	3.85	-

* Relating to sales in home market 894 No. of invoices were produced during the period of investigation.

Source: BABMA letter Dated: 20.6.01, Appendix-1, Appendix-3 of the letter.

Table-10 : Sales Price Structure for Export to India

Price Structure/ Unit / Product Grade	Ex-factory* cost $	Net profit/loss before tax	Unit Selling Price (ex-factory)	Selling Price/Unit in ACU$ + (Packing + Inland Freight) or (Export Price)
NS40 per unit	9.41	1.32	10.73	10.98
NS40Z	10.65	1.11	11.76	12.04
VBS40	10.56	1.06	11.62	11.88
VBS40Z	12.08	1.14	13.22	13.50
6V9R	12.64	0.57	13.20	13.75
V75T	17.14	3.09	20.24	20.75
V88T	22.08	2.37	24.45	25.15
V99T	23.32	3.08	26.40	27.10
N40	11.80	1.71	13.51	13.85
NS60	13.38	1.94	15.32	15.68
N70	17.37	5.44	22.81	23.30
N70Z	19.28	5.43	24.71	25.22
VX50	12.66	2.90	15.56	15.99
VX50Z	14.46	3.33	17.79	18.22
VHD1200	27.58	2.38	29.97	31.00
VHD1200-CF	29.23	1.74	30.97	32.00
VHD1500	33.37	1.96	35.33	36.50
VHD1500-CF	34.69	1.64	35.33	37.50
VHD1800	39.66	3.97	43.63	45.00
VHD1800S	37.63	2.04	39.67	41.00
VHD880	22.28	1.04	23.33	24.00
N100	24.05	4.68	28.73	29.45
N120	28.32	7.41	35.74	36.75
N150	33.93	9.51	43.44	44.55
N200	40.27	14.64	54.91	56.25
N200S	38.28	12.67	50.95	52.25
6RAP20	8.37	0.15	8.52	8.75
54434	13.86	0.98	14.84	15.17
55530	16.28	2.06	18.34	18.73
56618	18.82	3.20	22.02	22.50
57417	20.78	3.28	24.06	24.57
58815	24.51	3.79	28.30	28.93
59218	26.47	2.72	29.19	29.85
6N4-2A	1.77	0.40	2.17	2.20
6N4-2A-2	1.77	0.40	2.17	2.20
12N5-3B	3.05	0.50	3.55	3.60
PU9E	3.50	1.37	4.87	4.95
YB2-5L-C	1.78	0.97	2.76	2.80
YB9L-B	4.37	1.54	5.91	6.00

*Ex-factory cost = Materials + Direct labour + Utilities + Overheads (Manufacturing O.H., Depreciation, Financing Cost, Interest cost, Packing cost, Selling & Administration cost.)

Source: BABMA letter dated 20.06.2001, Appendix-8, & Summary Sheet.

7.3.3 Table-10 reveals that there is 39 independent grade wise batteries have been exported to India. Out of those 39 independent categories of batteries only 11 categories of battery's data relating to sales price structure in the domestic market have been found (Table-8). As per available data relating to sales price structure in the domestic market of the 11 categories of battery, it is evident that the unit-selling price (ex-factory) is higher then the respective cost of production (ex-factory cost) of all the category of battery. Which imply that the sales in the domestic market of the exporter are made in the "**ordinary course of trade**". As because the exported batteries are also sold in the domestic market and the sales are made in the "**Ordinary course of trade**", therefore, in this case, the ***normal value*** as per Article 2 of AD Agreement would be generally the **price of the battery at issue**. That is "**ex-factory unit selling price**" in the domestic market would be the **normal value** (Table-8, Col.4) for the respective category of battery. In terms of broad category, the normal value for Automotive Battery and Motorcycle Battery would be US $ 27.91 and US $ 3.85 respectively (Table-9).

7.3.4 But in calculating normal value in case of Bangladesh, India has used their assumption like as "the cost of production of a producer in Bangladesh can not be lower than the Indian costs." They have used "constructed cost of production" method based on international prices of the major raw materials (Petition, P.17). Using the "constructed cost of production" method they have determined the **normal value** for Bangladesh at least (confidential) per battery (Petition, P.18).

7.3.5 DGAD of India also recognized the constructed cost of production method in calculating the normal value for Bangladeshi batteries in their initiation notification (Initiation Notification, p.2) which is a very weak procedure India has followed in this case, because " where no such comparison can be made then the normal value is constituted with reference to the cost of production in the country of export plus a margin for profit (para 1.3.5, p 6). **This is a clear-cut violation of Article 2 of AD agreement regarding the procedure should be followed in calculation of normal value.**

7.3.6 The weaknesses of this finding are lack of information for fair calculation of normal value in terms of independent grade wise price structure and sales of Motorcycle and Automotive batteries in both home market and India. If the detailed information for the period of investigation could be available according to the suggested Dummy Tables-1 & 2 in **Annexure-V**, than the calculations would be more realistic and reliable.

7.4.0 Determination of Export Price

7.4.1 Export price is the price of the product in the country of import. Article 2 of AD agreement contains detailed provisions governing the calculation of normal value and export price, and elements of the fair comparison that must be made.[63]

7.4.2 General Rule: The export price will normally be based on the transaction price at which the foreign producer sells the product to an importer in the importing country. (Article 2 of ADA, Determination of Export Price). As per WTO Rules, export price for independent battery grade would be the selling price per unit in ACU$ + (Packing + inland freight) which can be found from Table-10, Col.5).

7.4.3 In a letter written to DGAD by BABMA dated 31.05.01, India has clearly explained their view point about the volume, value and export price as shown by the petitioners in their petition. According to BABMA, the figures in the petition do not reflect the true volume, value and export price of exports from Bangladesh to India. BABMA has submitted their true volume, value and export price in the Table-11 & 12 in terms of automotive and motorcycle battery. The DGAD of India has recognized the petitioners claim of calculation of export price on the basis of the data obtained from DG Commercial Intelligence & Statistics Kolkata and from other secondary sources. The petitioners have also claimed on account of landing charges, ocean freight, marine insurance, commission, port handling etc. to arrive at net export price (Initiation Notification. P.2, Para 7).

7.4.4 But as neighboring country in case of Bangladesh's export to India it is evident that the rebate/commission/discounts and ocean insurance are not applicable in this case in calculating the export price.[64] India have calculated the export price on the basis of assumption and on theoretical consideration but not on the basis of practical export documentation. Because, the export from Bangladesh was mainly carried out through land port and by truck, therefore questions of ocean freight, marine insurance are useless and irrelevant in this case.

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[63] Internet: AD: Determination of Dumping.

[64] BABMA letter to VC, EPB, dated 20.06.2001; Appendix - 2.

Table- 11

Lead Acid Battery Exported by RBL to India under H.S. Code No. 8507.10 of Automotive Battery from January to September, 2000.

Sl. No.	Period	Unit (Pcs.)	Quantity (Kg.)	C&F Value
1.	January, 2000	496	59681	US$ 84,219.00
2.	February, 2000	2888	34228	US$ 46,777.00
3.	March, 2000	1802	30300	US$ 38,990.00
4.	April, 2000	5295	84169	US$ 116,762.00
5.	May, 2000	3044	51435	US$ 67,757.00
6.	June, 2000	15691	227367	US$ 301,908.00
7.	July, 2000	652	8403	US$ 11,536.00
8.	August, 2000	1020	18034	US$ 26,075.00
9.	September, 2000	2011	25744	US$ 34,483.00
Total for the period of Investigation		**37399**	**539361**	**US$ 728,325.00**

Source: BABMA Certified letter Dated: 27.02.2001.

Table- 12

Lead Acid Battery Exported by RBL Bangladesh to India under H.S. Code No. 8507.10 of Motorcycle Battery from January to September, 2000.

Sl. No.	Period	Unit (Pcs.)	Quantity (Kg.)	C&F Value
1.	January, 2000	2582	2948	US$ 8,591.00
2.	February, 2000	883	1281	US$ 3,292.00
3.	March, 2000	882	1233	US$ 3,161.00
4.	April, 2000	3668	5847	US$ 14,251.00
5.	May, 2000	469	754	US$ 1,830.00
6.	June, 2000	5838	8975	US$ 22,414.00
7.	July, 2000	724	964	US$ 2,438.00
8.	August, 2000	718	689	US$ 2,240.00
9.	September, 2000	1040	1298	US$ 3,204.00
Total for the period of Investigation		**16804**	**23989**	**US$ 61,420.00**

Source: BABMA Certified letter Dated: 27.02.2002

7.4.5 In terms of broad category, as per calculation on the basis of available information the export price of per unit automotive battery has appeared US$ 19.47 and motorcycle battery is US$ 3.66 considering the available information found in Table-9.

7.4.6 In estimating export price, India have considered average export price per kg of lead for various types of batteries. Further, India have also determined export price separately in respect of two types of batteries (confidential). As per Indian calculation export price comes as US$ 2.05 per piece, and dumping margin is 924.05% (Table-13), which is absurd and impossible. RBL official Mr. Jabed Islam has also argued the same on this point (para 3.2.21, p18). India will never be able to prove the figure through valid documentary evidences, as Bangladesh is demanding that RBL is not dumping the batteries to India.

Table-13: Export Price and Dumping Margin as per Indian Estimation

Type	Volume	Value Rs.	Export Price US $ Per Pcs.	Dumping Margin %
Bangladesh	275480	26239814 (US$ 566123.28)	2.05	924.05%

Source: Petition, P18,20; Exchange Rate: 46.35 Rs. = 1 US$, Petition, P17.

7.5.0 Comparison of Normal Value and Export Price

7.5.1 Basic requirements: The AD Agreement requires that a fair comparison of the export price and the normal value be made. The basic requirements for a fair comparison are that the prices being compared are those of sales made at the same level of trade, normally the ex-factory level, and of sales made at a nearly as possible the same time. As part of the Agreement's requirements regarding transparency and participation, the investigating authorities are required to inform parties of the information needed to ensure a fair comparison, for instance, information regarding adjustments, allowances, and currency conversion, and may not impose an "unreasonable burden of proof on parties".

7.5.2 As per Indian calculation the export price of Bangladesh's battery is US $ 2.05 and calculated dumping margin is 924.05% (Anti-dumping Petition, p18) is completely and totally denied by BABMA and strongly asserts that RBL, the only manufacturer and exporter of lead acid battery from Bangladesh to India and a member of BABMA has never sold battery at dumping price in the Indian market.[65] Considering the data presented in Table-9 & 10 about normal value and export price of independent grade wise batteries, no evidence of dumping found as far as independent grade wise battery consideration. But considering the overall broad category of batteries for automotive and motorcycle batteries, the Table-13 shows dumping margin is @ 8.25% instead of 924.05% calculated by India. The two figures are significantly different from each other. BABMA letter to DGAD, dated 22.11.01, para 3 also supports the calculation of the figure of the Table- 14. Therefore, the information and calculation should be checked carefully in real situation.

7.5.3 The Indian Authority proposes to make comparison of normal value and export price separately for each type of battery and arrive at dumping margin individually for each type. There after, overall dumping margins for industrial, automotive and motorcycle lead acid batteries separately for individual exporters or residual category shall be calculated by taking weighted average of these individual model wise dumping margins. After arriving at dumping margins for industrial, automotive and motorcycle batteries separately, the reference prices have been proposed to be calculated by using the information relating to the weights of the batteries exported to India. [66]

Table-14

Comparison of Export price and Dumping Margin Calculated in the Study and by India

Battery Type	**Normal value US$/Unit**	**Average Normal Value $**	**Export Price US$/Unit**	**Average Export Price Calculated by**		**Dumping Margin Calculated by**	
				Data in the study	**India**	**Data in the study**	**India**
Automotive battery	27.91	15.88	19.47	US$ 14.57	US$ 2.05	8.25%	924.05%
Motorcycle battery	3.85		3.66				

Sources:Table-9 &10; and Anti-dumping Petition, p18; and BABMA letter to DGAD, dated 22.11.01, para 3.

65 BABMA letter no. 118, dated 31.05.2001, written to DGAD of India, p8, para 19.
66 DGAD letter dt. 12.11.01 Annex-1, P.3.

7.6.0 Like Product (Article 2.6)

7.6.1 An important decision must be made early in each investigation to determine the domestic "like product". Like product is defined in the agreement *as "a product which is identical, i.e. alike in all respects to the product under consideration or, in the absence of such as product, another product which, although not like in all respects, has characteristics closely resembling those of the product under consideration"*. The determination involves first examining the imported product or products that are alleged to be dumped, and then establishing what domestically produced product or products are the appropriate "like product". The decision regarding the like product is important because it is the basis of determining which companies constitute the domestic industry, and that determination in turn governs the scope of the investigation and determination of injury and causal link.[67]

7.6.2 The petitioners in their petition have included 26 HS code lines and claimed items falling under these heading are "like product" of lead acid battery. But in case of Bangladesh only HS Code 8507.10 (automotive) battery is appropriate in these circumstances. Only RBL manufactures and exports lead acid automotive batteries to India falling under HS Code 8507.1000 and 8507.2000 under brand name "VOLTA". Any of BABMA members companies other than HS Code 8507.1000 and 8507.2000 by RBL have not exported the batteries from Bangladesh to India.[68] Because a small battery type like motorcycle battery can not be a substitutable for other battery, industrial batteries have separate specification and used for preserving electric power over a long period of time, industrial batteries can not be used for car, bus, truck, or other automobiles. In determining "like product", without examining the imported product or products that are alleged to be dumped first, the DA considered 26 HS code lines and item falling under these heading as "like product". Which is a violation of the procedure in determining like product under ADA of WTO. **Therefore, DA of India has violated Article 2.6 of ADA of WTO in determining like product in case of export from Bangladesh.**

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[67] ADP: Internet.

[68] i. BABMA letter to DGAD, Dated: 16.02.01; ii. BABMA letter to DGAD, Dated: 23.02.01; iii. Initiation Notification, DGAD; iv. Petition.

7.7.0 Domestic Industry

7.7.1 The Agreement defines the term "domestic industry" to mean "the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products".[69]

7.7.2 The EIL and Amara Raja Batteries Ltd. jointly filed this petition. These companies are also being referred a petitioners in the present petition. The petitioners command a major portion of the Indian production. The petitioners, therefore, satisfy the standing to file the present petition and constitutes "domestic industry" within the meaning of the anti Dumping Rules. The petitioners demand that they have provided all necessary information for the purpose of the present petition in the form and manner prescribed by the Designated Authority and has consented to provide all necessary and relevant information as required by the DA for the purpose of the investigation. They have also expressed their no objection for any verification.[70]

7.7.3 The petitioners expressed their views that in the determination of scope of domestic industry based on assessment of production in terms of number of batteries by various companies would not be appropriate because of large types of different batteries with significantly different costs and prices. However, the lead consumption would be a much better indicator. Therefore, the petitioners have determined standing and scope of the domestic industry on the basis of lead consumption by the Indian industry. The petitioners also demand that they constitute domestic industry within the meaning of the Rules.[71]

7.7.4 BABMA raised a question in determining EIL & ARBL as domestic industry. And BABMA wants them to consider as related domestic producer as they are also involved in export & import of the alleged product. BABMA demands to exclude them from the domestic industry. The argument may not go in favour of BABMA because in that case BABMA has to prove "relationship of legal or effective" control between 'related' to an exporter or importer or to behave differently from non-related producer.[72]

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69 ADP: Dumping in the GATT/ WTO -Article- 4, Definition Domestic Industry, Internet.

70 Petition for Imposition of Anti-dumping Duty, p 6.

71 Petition for Anti-dumping Duty, p 22.

72 BABMA letter to DGAD, dated. 31.05.01; and Article- 4 of ADA.

7.8.0 Determination of Injury

7.8.1 Article 3 of the AD Agreement contains rules regarding the determination of material injury caused by dumped imports. Material injury is defined as material injury itself, threat of material injury, or material retardation of the establishment of a domestic industry. The basic requirement for determination of injury is that there be an objective examination, based on positive evidence of the volume and price effects of dumped imports and the consequent impact of dumped imports on the domestic industry. Article 3 contains specific rules regarding factors to be considered in making determination of material injury, while specifying that no one or several of the factors, which must be considered, is determinative. Article 3.5 requires, in establishing the causal link between dumped imports and material injury, known factors other than dumped imports, which may be causing injury, must be examined, and that injury caused by these factors must not be attributed to dumped imports. A significant new provision, Article 3.3 establishes the conditions in which a cumulative evaluation of the effects of dumped imports from more than one country may be undertaken. Under the rules, authorities must determine that the margin of dumping from each country is not de minimis, that the volume of imports from each country is not negligible, and that a cumulative assessment is appropriate in light of the conditions of competition among the imports and between the imports and the domestic like product.

7.8.2 Data and information given on the determination of injury of the domestic industry in the petition is very much interesting, confusing and misleading.

Table- 15

Import of Batteries by India from Subject Countries

Year	Imports from Subject Countries in Pieces	Values (Rs. Lakh)
1997-98	1283452	3188.35
1998-99	1239038	4150.65
1999-2000	907440	4425.86
2000-2001*	3657240	5667.70

*Annualized on the basis of information published by the DGCI&S from April 2000.
Source: Anti-dumping Petition by Indian producers, P22.

7.8.3 The volume and value of the imported battery from the subject countries have been given in absolute term from the year 1997-98 to 2000-2001 (Table-15). The table shows that there has been substantial increase in battery import in absolute term in the year 2000-01 compared to other preceding years.

7.8.4 The petitioners have clearly stated in their petition that they have monitored the market and found that there has been significant growth in the OEM (Original Equipment Manufacturers) market due to sharp increase in cars and other automobiles production in India. This leads to increase in the market (demand) in the OEM and replacement market, as the batteries have limited life. [73]

7.8.5 Analyzing the above statement comparing with the economic parameters of the domestic industries given in the petition, it will be cleared that as per present state of condition and technology Indian domestic industries are not in a position to meet up the sharp increased demand of batteries in the Indian market. Because, as we see the tables below about the economic parameters such as installed capacity, production, capacity utilization, and sales volume all have been significantly increased by the domestic industries. The Exide Industries and other domestic industries in India have already over exploited the capacity utilization. There is no scope to further increase the capacity of the Indian industries over night.

Table-16: Production and Capacity Utilization of the Petitioners

Producer	1997-98	1998-99	1999-2000
Exide Industries			
Installed Capacity	100	106.6	106.6
Production	100	143.35	178.13
Capacity Utilization	100	134.48	167.09
Amara Raja			
Installed Capacity	100	145.45	200
Production	100	122.81	126.63
Capacity Utilization	100	84.44	63.32
Domestic Industries			
Installed Capacity	100	108	109.96
Production	100	142.32	175.53
Capacity Utilization	100	131.79	159.64

Note: Indexed figures considering 1997-98 as 100.
Source: Production and capacity utilization Table, Petition for Anti Dumping by Indian Producer, p23.

[73] Petition for Anti-dumping Duty, P.24, Para 3.

7.8.6 It is not possible for Indian industries to produce quality battery through over exploitation of the capacity utilization with the existing installation without further modernization to meet up the significant increase in demand.

Table-17
Sales Volume of the Domestic Industries

Producer	**1997-98**	**1998-99**	**1999-2000**
Exide Industries	100	117.46	171.82
Amara Raja	100	122.82	125.1
Total	100	117.79	168.96

***Source*:** Sales Volume of the Domestic Industries Table, Petition for Anti Dumping by Indian Producer, p23.

7.8.7 As there is no scope for further increase in capacity utilization of the domestic industry, which is already been over exploited, naturally the gap of the demand will be covered by import. The sharp increase in import is very consistent with the sharp increase in demand of battery in Indian market. Therefore, the import is very much related with the sharp increase in demand and incapacity of the Indian industries but cannot be related with the injury of domestic industry.

7.8.8 Moreover, the producers have given the absolute import figure for the year 2000-01 but in terms of economic parameters, they have not supplied any information for the year 2000-01. As a result, status of the respective parameters such as production, capacity utilization and sales volume could not be related with the import figure of 2000-01 and the impacts of that import figures on the economic parameters mentioned above can't be assessed or related; and unable to judged for determination of injury.

7.8.9 In the evidence of the injury part of the petition, the petitioners have expressed the possibility of lost contract (Petition, P.25, Para 2) and possibility of loss of employment in establishing material injury. Which cannot be considered to prove material injury. As per WTO rules, the determination of injury must be based on positive evidence and involve an objective examination but not on the basis of possibility (Article-3 of Anti-dumping, ADP: Injury, Para 2).

7.8.10 Therefore, there are evidences of weaknesses as per Article-3 in determining material injury by the DA of India. Which may be the point for invalidation of the material injury determined by India.

7.9.0 Initiation and Subsequent Investigation

7.9.1 Article-5 of ADA clearly states that the application shall contain a complete description of the allegedly dumped product, the identity of each known exporters or foreign producers (para 5.2, sub-para ii of Article 5). But in the said application, the petitioners could not specifically describe the allegedly dumped product as per HS Code rather they have amalgamated the product with 26 HS Code lines to define the like product. Moreover, the petitioners have identified two wrong Bangladeshi companies as known exporters or foreign producers. In addition to the above, the paragraph 5.3 of Article 5 of ADA states that the authorities shall examine the accuracy and adequacy of the evidences provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation. Therefore, it is clear from the above, that the authority has not sincerely examined the accuracy and adequacy of the evidences and information provided in the application. **So, it is a noncompliance of paragraph 5.2(ii) and 5.3 of Article 5 by DA of India.**

7.9.2 Furthermore, as per preliminary findings issued by the DA of India on March 23, 2001 to Bangladesh High Commission in India, the volume of import of the battery from Bangladesh to India accounts less than 3% of the value/ volume of import of the subject goods to India. Therefore, the lead acid battery from Bangladesh is ***de minimis***. [74] Therefore, according to the paragraph 5.8 of Article 5, there shall be immediate termination of the investigation against Bangladesh. But India did not do it. Rather, the DGAD issued a letter to the Bangladesh High Commission in India on April 09, 2001 for public hearing at 03.00 pm on May 10, 2001. **Which is a violation of Article 5.8 of ADA of WTO.**

7.10.0 Complain of Non-Cooperation

7.10.1 In the "Initiation Notification" the DA asked the interested parties to send all information relating to this investigation in writing to the DA not later than 40 days from the date of publication of the notification. [75] And subsequently ask for so many information those are confidential & sensitive documentation for RBL. RBL supplied all the required information as and when asked for. RBL holds little information, as those are very confidential and sensitive.

74 Bangladesh High Commission Letter No. Com. 1(4)/ Tariff/ 2000, dated 29.03.2001, written to M/o Commerce, Dhaka.

75 Initiation Notification, Para 12 & 13.

7.10.2 As per Article 6 of the AD Agreement, it requires authorities to guarantee the confidentiality of sensitive information and verify the information on which determinations are based (ADP: Investigation, Internet). But the DA did not guarantee the confidentiality of sensitive information. Without guarantee the confidentiality, the DA cannot charge for non-cooperation. Because, RBL stated the confidentiality- reason earlier. As per Article 6, it is the responsibility of DA to guarantee the confidentiality of sensitive information to the interested parties concerned. Moreover, the DA not even verified the information supplied by the petitioners in the petition, e.g., wrong list of exporters from Bangladesh, and other related information. **Which implies that the DA of India did not sincerely practices the Article 6 in conducting the investigation.**

Merit Statement

7.11.1 From the above analysis and findings, the study contends that the calculation of normal value by DA of India is inconsistent with the WTO rules, because erroneous methodology was used for determining the normal value and the resulting margin of dumping. The study further contends that the determination of injury was not based on positive evidence and did not include an evaluation of all relevant economic factors and information, which led to an erroneous determination of material injury suffered by the petitioner. The study also holds the view that the DA of India's establishment of the facts was not proper and that their evaluation was not unbiased or objective in terms of export volume and valuc. The study also claims that the DA of India has not taken into account Bangladesh's special situation as a LDC. Therefore, from the study it appears that India has violated Articles 2, 2.6, 3,5.2(ii), 5.3, 5.8, 6, of the Anti-Dumping Agreement and Article I and VI of GATT 1994 and the case has substantial merit in favour of Bangladesh under WTO rules.

VIII. PROBLEMS IN RESPONDING THE CONFLICT EFFECTIVELY

8.1.1 From the previous discussions and analysis of the study, several problems have been perceived in responding the trade conflict effectively from Bangladesh side which are as follows:

(i). Lack of knowledge and understanding of the games of the rules, implications and interpretation of different Articles of SAPTA agreement and WTO rules.

(ii). Government has taken very sincere efforts and initiatives to handle the matter efficiently & sincerely but it was the lack of professional expertise of supporting officials of the Ministry and related organizations in handling the case. It is not possible for the ministry to study and assess the strategy and merit of the conflict by case to case. It is not even the function of the Ministry. Ministry as super body will provide policy decision to the matter considering the opinion and advise from supporting experts in terms of strategy and merit of the case and whether we should go to the DSB of WTO or pursue for SAPTA consultation to settle the dispute with India. Therefore, lack of institutional and professional support to guide the Ministry for policy decision is one of the major problems in this case.

(iii). Shortage of number of officials in the Ministry with professionally developed knowledge and expertise who will be effectively able to utilize and pursue the expert opinion and advice received from the supporting institutions and organizations involved in handling the case.

(iv) Deficiency of knowledge and diplomatic aptitude of the executives from exporter side in responding the DA of India in the process of investigation.

(v). Problem of proper follow up the case and reluctantness of the exporters even the Chairman of the Task Force suggested specifically to continue their efforts till the exclusion of Bangladesh from the case by India.

(vi). Deficiency of knowledge on how to cooperate the DA of India to the process of investigation by providing necessary information and its legal consequences of non-cooperation under WTO rules.

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(vi). Deficiency of knowledge on how to cooperate the DA of India to the process of investigation by providing necessary information and its legal consequences of non-cooperation under WTO rules.

(vii). Insufficient knowledge and professional training on the SAPTA and WTO rules and procedures of our diplomatic officials engaged in concerned foreign mission.

(viii). The exporter was reluctant in responding and pursuing the case with sincere efforts.

(ix). Lack of ownership feelings by the officials of the concerned government organizations in pursuing the case. It appears from the study that there were some sorts of lack of fellow feelings that it is the case against private exporters not the government, if the case is lost the exporter will loose not the government. This type of feeling is immoral to the government officials. The BTC official argues that there are minimum possibilities to resolve the case under SAPTA; because there are other country also the parties to the case. In spite of that if BABMA wants to resolve the case under SAPTA then BABMA may request the Ministry with necessary arguments; and if the Ministry asks, then BTC will take necessary action accordingly (Para 4.3.9(5)). But the Chairperson had a very strong commitment to safeguard the trading interest of the country and asked to mobilize the governmental efforts in all levels and ways.

IX. RECOMMENDATIONS FOR FUTURE COURSE OF ACTIONS

9.0 Now a days, trade promotion and trade development is not only depend on the comparative advantages and market access opportunities but also depends on the knowledge and expertise on the rules and agreements of SAPTA and WTO in responding trade dispute and safeguarding trading interests. Therefore, trade promotion, trade dispute and safeguarding trading interests; all the issues will be concerned with WTO and SAPTA agreements and procedures. Bangladesh must have to have intellectual expertise and institutional capabilities in responding trade disputes properly and effectively to safeguard its trading interests and to maximize the benefits from globalization and liberalization. From that point of views the following steps should be taken:

9.1.1 Immediate Action

i. Contemplating the findings and merit of the case under both SAPTA and WTO rules from Bangladesh perspectives, it is better to prove Indian anti-dumping initiatives and procedures invalid at the DSB of WTO. Because, Bangladesh has substantial points under WTO rules to have a meaningful resolution of the trade conflict with India.

ii. Bangladesh needs to face the case as a test case for survival under WTO regime. Considering the merit of the case, government should form a five member expert team to review the detailed merit of the case very quickly and initiate the process for DSB of WTO if suggested.

iii. ***Develop a core group of officials***: A core group of officials at different levels primarily from the EPB, BTC, BPATC, M/o. Commerce, Agriculture, Industry, Foreign Affairs, Finance, Textile, NBR and the officials of different Chambers of Commerce and Industries must be developed with intensive knowledge and expertise on the SAPTA & WTO rules and procedures, who will be devoted to study and work on the area for at least five years to maximize the benefits from globalization and liberalization and safeguarding our trading interests.

iv. In any trade dispute, first respondent is the concerned executive of the business/ production enterprises. It is very much necessary to respond the dispute efficiently in terms of WTO/ SAPTA rules and procedures. Therefore, concerned business executives of the enterprises must be trained on the rules and procedures of WTO and SAPTA, so that they can handle the matter efficiently in safeguarding our trading interests. In this respect, cooperation from FBCCI, other business community and association must be ensured to materialize the training for their business executives.

v. ***Immediate training*** programs at both home and abroad should be arranged for the core officials on the WTO and SAPTA rules & procedures. BPATC has already conducted its first training course on **"Trade & Aid: Negotiation Techniques"** specifically based on the WTO rules and procedures which has been highly appreciated by the participants. BPATC should be strengthening to conduct more training on this issue and to integrate a separate module on WTO rules and procedures in all the three core courses conducted by BPATC for different levels of officials.

vi. BPATC has already established a **WTO Studies Cell** for intensive study and research on the matter and already used its research inputs to its first "Trade and Aid: Negotiation Techniques Course" effectively and has been appreciated by the officials participated in the training course. To ensure institutional and professional support to the Ministry in pursuing trade promotion and handling trade dispute, more WTO Studies Cell should be established in the M/o. Commerce, BTC and M/o. Foreign Affairs, where a small core group of officials will be devoted to study and conduct research on WTO/ SAPTA issues and will work as a "***think tank***" on the area to help the government. So that Ministry can have intellectual, professional expertise and institutional support on the problems in making proper policy decisions simultaneously from various alternative sources.

vii. A collaborative program must be organized with World Trade Institute (WTI), Geneva and concerned institutes in the country for training of the core officials.

Long Term Actions

i. A **Foreign Trade Institute** should be established immediately for long-term capacity building to address the issue properly and effectively.

ii. Officials and executives of trading organizations must be developed in responding the SAPTA and WTO rules and investigation procedures properly and effectively through long term training.

iii. Continuous follow-up must be ensured through institutional capacity building in handling the investigation process and the matter of trade dispute.

iv. Proper cooperation should be ensured to the designated authority (DA) for investigation under the purview of WTO and SAPTA rules and procedures.

v. Exporters and their executives should be very careful and sincere in following and responding investigation procedures and safeguarding their legitimate trading interests.

vi. Officials of the relevant organizations of the government and Ministries involved in the process must have a sense of ownership feelings about the problems of the exporters as our own problems.

vii. Develop awareness to respond effectively on the issue to the officials and business communities through media, round talk, seminar and conferences.

viii. Government should build such an institutional mechanism, which can work and help effectively and efficiently to the exporters in responding the trade conflict in terms of professional expertise and advise for safeguarding our trading interests.

X. CONCLUSION

10.1 Contemplating the findings, analysis and merit of the case under WTO rules and SAPTA agreement in the study, it reveals that there is no reason for India to go for SAPTA consultation to resolve the case. Very technically India has bypassed the SAPTA agreement and has applied anti-dumping measure under WTO rules. In this case Bangladesh can go to SAPTA against India for the charge of violation of the Annex-1(d) of Article-6 and Article 10(d) & (e) of SAPTA agreement and non-consideration of Bangladesh's position as an LDC. Under SAPTA agreement Bangladesh can have special consideration by India from equal application of anti-dumping measure on Bangladesh with other alleged countries such as China, Japan and Korea in this case as because they are not the member of LDCs under SAPTA. Before that, Bangladesh needs to examine the case how strongly they can negotiate the case with arguments in terms of respective articles of SAPTA mentioned above and simultaneously Bangladesh needs to pursue the matter through the political and diplomatic channels under ministerial level very carefully to have meaningful resolution of the trade conflict with Indian.

10.2 In case of failure to do so, it is better to prove the Indian anti-dumping initiatives invalid at the DSB of WTO. The study contends that the calculation of normal value by DA of India is inconsistent with the WTO rules, because erroneous methodology was used for determining the normal value and the resulting margin of dumping. The determination of injury was not based on positive evidence and did not include an evaluation of all relevant economic factors and information, which led to an erroneous determination of material injury suffered by the petitioner. The study also holds the view that the DA of India's establishment of the facts was not proper and that their evaluation was not unbiased or objective in terms of export volume and value. The DA of India have not taken into account Bangladesh's special situation as a least developing country. Therefore, from the study it appears that India has violated Articles 2, 2.6, 3,5.2(ii), 5.3, 5.8, 6, etc. of the Anti-Dumping Agreement and Article I and VI of GATT 1994.

10.3 Therefore, in any way **the case should not be left unchallenged**. Because it is the beginning, if we cannot respond the case properly, there might be more in future, which will be a disastrous for our trading interests.

ANNEXURE- I

SAARC PREFERENTIAL TRADING ARRANGEMENT (SAPTA)
Consolidated National Schedule of Concessions
GRANTED BY INDIA
UNDER FIRST, SECOND AND THIRD ROUNDS OF TRADE NEGOTIATIONS
under SAPTA AGREEMENT

S.No.	HS CODE	Description of Product	Round	Basic Tariff* % (1999-2000)	Extent of Tariff Concession under SAPTA (as a percentage of Tariff)		Any special NTBs with particular reference to QRs	Concessions to SAARC Countries vis-a-vis such NTBs/QRs	REMARKS
					For All Member Countries	For LDCs			
1	2	3	4	5	6	7	8	9	10
1	0301.10	Ornamental fish	Third	15%		50%	Restricted	Foot Note 1	
2	0301.91	Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)	Third	15%		50%	Restricted	Foot Note 1	
3	0301.92	Eels (Anguilla spp.)	Third	15%		50%	Restricted	Foot Note 1	
4	0301.93	Carp	Third	15%		50%	Restricted	Foot Note 1	
5	0301.99	Other	Third	15%		50%	Restricted	Foot Note 1	
6	0302.11	Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)	Third	15%		50%	Restricted		
7	0302.12	Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho)	Third	15%		50%			
8	0302.19	Other	Third	15%		50%			
9	0302.21	Halibut (Reinhardtius hippoglossoides, Hippoglossus hippoglossus, Hippoglossus stenolepis)	Third	15%		50%	Restricted		
10	0302.22	Plaice (Pleuronectes platessa)	Third	15%		50%	Restricted		
11	0302.23	Sole (Solea spp.)	Third	15%		50%	Restricted		
12	0302.29	Other	Third	15%		50%	Restricted		
13	0302.31	Albacore or longfinned tunas (Thunnus alalunga)	Third	15%		50%	Restricted		
14	0302.32	Yellowfin tunas (Thunnus albacares)	Third	15%		50%	Restricted		
15	0302.33	Skipjack or stripe-bellied bonito	Third	15%		50%	Restricted		
16	0302.39	Other	Third	15%		50%	Restricted		
17	0302.40	Herrings (Cluppea harengus, Clupea pallasii), excluding livers and roes	Third	15%		50%	Restricted		
18	0302.50	Cod (Gadus morhua, Gadus ogac, Gadus macrocephalus), excluding livers and roes	Third	15%		50%	Restricted		
19	0302.61	Sardines (Sardina pilchardus, Sardinops spp.), sardinella (Sardinella spp.), brisling or sprats (Sprattus sprattus)	Third	15%		50%	Restricted		
20	0302.62	Haddock (Melanogrammus aeglefinus)	Third	15%		50%	Restricted		
21	0302.63	Coalfish (Pollachius virens)	Third	15%		50%	Restricted		
2	0302.64	Mackerel (Scomber scombrus, Scomber australasicus, Scomber japonicus)	Third	15%		50%	Restricted		

S.No.	HS CODE	Description of Product	Round	Basic Tariff * % (1999-2000)	Extent of Tariff Concession under SAPTA (as a percentage of Tariff) For All Member Countries	For LDCs	Any special NTBs with particular reference to QRs	Concessions to SAARC Countries vis-a-vis such NTBs/QRs	REMARKS
1	2	3	4	5	6	7	8	9	10
1994	8504.32	Having a power handling capacity exceeding 1 kVA but not exceeding 16 kVA	Third	25%		50%			
1995	8504.33	Having a power handling capacity exceeding 16 kVA but not exceeding 500 kVA	Third	25%		50%			
1996	8504.34	Having a power handling capacity exceeding 500 kVA	Third	25%		50%			
1997	8504.40	Static converters	Third	25%		50%	Restricted		
1998	8504.50	Other inductors	Third	25%		50%			
1999	8504.90	Parts	Third	25%		50%			
2000	8505.11	Of metal	Third	25%		50%			
2001	8505.19	Other	Third	25%		50%			
2002	8505.20	Electro-magnetic couplings, clutches and brakes	Third	25%		50%			
2003	8505.30	Electro-magnetic lifting heads	Third	25%	10%	50%			
2004	8505.90	Other, including parts	Third	25%		50%			
2005	8506.10	Manganese dioxide	Third	40%		50%	Restricted		
2006	8506.30	Mercuric oxide	Third	40%		50%	Restricted		
2007	8506.40	Silver oxide	Third	40%		50%	Restricted		
2008	8506.50	Lithium	Third	40%		50%	Restricted		
2009	8506.60	Air-zinc	Third	40%		50%	Restricted		
2010	8506.80	Other	Third	40%		50%	Restricted		
2011	8506.90	Parts	Third	40%		50%			
2012	8507.10	Lead-acid, of a kind used for starting piston engines	Third	40%		60%			
2013	8507.20	Other lead-acid accumulators	Third	40%		60%			
2014	8507.30	Nickel-cadmium	Third	40%		50%			
2015	8507.40	Nickel-iron	Third	40%		50%			
2016	8507.60	Other accumulators	Third	40%		50%			
2017	8507.90	Parts	Third	40%		60%			
2018	8508.10	Drills of all kinds	Third	25%		50%			
2019	8508.20	Saws	Third	25%		50%			
2020	8508.80	Other tools	Third	25%		50%			
2021	8508.90	Parts	Third	25%		50%			
2022	8509.10	Vacuum cleaners	Third	40%		50%	Restricted		
2023	8509.20	Floor polishers	Third	40%		50%	Restricted		
2024	8509.30	Kitchen waste disposers	Third	40%		50%			
2025	8509.40	Food grinders and mixers; fruit or vegetable juice extractors	Third	40%		50%	Restricted		
2026	8509.80	Other appliances	Third	40%		50%	Restricted		
2027	8509.90	Parts	Third	40%		50%			
2028	8510.10	Shavers	Third	40%		50%			
2029	8510.20	Hair clippers	Third	40%		50%			
2030	8510.30	Hair-removing appliances	Third	40%		50%	Restricted		
2031	8510.90	Parts	Third	40%.		50%			
2032	8511.10	Sparking plugs	Third	40%		50%			
2033	8511.20	Ignition magnetos; magneto-dynamos; magnetic flywheels	Third	40%		50%			
2034	8511.30	Distributors; ignition coils	Third	40%		50%			
2035	8511.40	Starter motors and dual purpose starter-generators	Third	40%		50%			
2036	8511.50	Other generators	Third	40%		50%			
2037	8511.80	Other equipment	Third	40%		50%			

S.No.	HS CODE	Description of Product	Round	Basic Tariff * % (1999-2000)	Extent of Tariff Concession under SAPTA (as a percentage of Tariff)		Any special NTBs with particular reference to QRs	Concessions to SAARC Countries vis-a-vis such NTBs/QRs	REMARKS
					For All Member Countries	For LDCs			
1	2	3	4	5	6	7	8	9	10
2541	9608.50	Sets of articles from two or more of the foregoing subheadings	Third	40%		50%	Restricted		
2542	9608.60	Refills for ball point pens, comprising the ball point and ink-reservoir	Third	40%		50%			
2543	9608.91	Pen nibs and nib points	Third	40%		50%			
2544	9608.99	Other	Third	40%		50%			
2545	9609.10	Pencils and crayons, with leads encased in a rigid sheath	Third	40%	10%	50%			
2546	9609.20	Pencil leads, black or coloured	Third	40%	10%	50%			
2547	9609.90	Other	Third	40%	10%	50%			
2548	9610.00	Slates and boards, with writing or drawing surfaces, whether or not framed.	Third	40%		50%			
2549	9611.00	Date, sealing or numbering stamps, and the like (including devices for printing or embossing labels), designed for operating in the hand; hand-operated composing sticks and hand printing sets incorporating such composing sticks.	Third	40%		50%			
2550	9612.10	Ribbons	Third	40%		50%			
2551	9612.20	Ink-pads	Third	40%		50%			
2552	9613.10	Pocket lighters, gas fuelled, non-refillable	Third	40%		50%			
2553	9613.20	Pocket lighters, gas fuelled, refillable	Third	40%	20%	50%			
2554	9613.30	Table lighters	Third	40%		50%			
2555	9613.80	Other lighters	Third	40%		50%	Restricted		
2556	9613.90	Parts	Third	40%		50%			
2557	9614.20	Pipes and pipe bowls	Third	40%		50%	Restricted		
2558	9614.90	Other	Third	40%		50%	Restricted		
2559	9615.11	Of hard rubber or plastics	Third	40%		50%	Restricted		
2560	9615.19	Other	Third	40%		50%	Restricted		
2561	9615.90	Other	Third	40%		50%			
2562	9616.10	Scent sprays and similar toilet sprays, and mounts and heads therefor	Third	40%		50%	Restricted	Foot Note 1	
2563	9616.20	Powder-puffs and pads for the application of cosmetics or toilet preparations	Third	40%		50%			
2564	9617.00	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners.	Third	40%		50%			
2565	9618.00	Tailors' dummies and other lay figures; automata and other animated displays used for shop window dressing.	Third	40%		50%			

* "Tariff" means customs duties included in the national tariff schedules of the Contracting States with respect to the aforesaid goods read with any other notification (for the time being in force) issued in respect of such goods but excluding notifications giving effect to the concessions under other Preferential Trading Arrangements.

Tariff Lines against which Restricted is shown at column 8 and left blank at column 9 means that the items are freely importable from SAARC Member States

S.No.	HS CODE	Description of Product	Round	Basic Tariff * % (1999-2000)	Extent of Tariff Concession under SAPTA (as a percentage of Tariff)		Any special NTBs with particular reference to QRs	Concessions to SAARC Countries vis-a-vis such NTBs/QRs	REMARKS
					For All Member Countries	For LDCs			
1	2	3	4	5	6	7	8	9	10

Foot note 1 - Items restricted for BOP purposes are freely importable from SAARC countries except the ones canalised and items covered under Article XX, XXI of GATT, 1994. Items under Article XX, XXI are appended below.

Foot Note 1

S.No.	EXIM CODE	DESCRIPTION
1	030110 00	Live ornamental fish.
2	030191 00	Live trout.
3	030192 00	Live [illegible]
4	030193 00	Live carp.
5	030199 00	Other
6	Ex 050800 01	Coral unworked or simply prepared but not otherwise worked of protected species.
7	Ex 050800 02	Chanks, of protected species.
8	Ex 050800 03	Cowries, of protected species.
9	Ex 050800 04	Cuttiefish fish bones, of protected species.
10	Ex 050800 05	Shells of molluses, crustaceans echinoderms of protected species.
11	Ex 050800 09	Others corals and similar materials, including powder and waste thereof, of protected species.
12	051000 01	Bezoar cow (goolochan), of protected species.
13	051000 02	Ox gallstone, of protected species.
14	051000 03	Placenta, frozen, of protected species.
15	Ex 051000 09.	Other animal products used in the preparation of pharmaceuticals products, of protected species.
16	071339 02	Australian lupin seeds
17	Ex 71300 00	Other dried leguminous vegetables (toxic pulses such as Blache Fleur or Vicia Sativa), shelled.
18	090810 01	Nutmeg, in shell
19	090810 02	Nutmeg, not in shell
20	090820 00	Mace
21	120930 00	Seeds of herbaceous plants cultivated principally for their flowers.
22	121190 13	Poppy, flowers & unripe heads of dried poppy
23	121190 15	Psyllium husk
24	121190 16	Psyllium seed
25	121190 26	Ayurvedic and Unani herbs, n.e.s.
26	121190 31	Poppy husk
27	121190 32	Vinca rosea

ANNEXURE- II

Fax-

Bangladesh export of Accumulator battery and parts during the last 5 years.

Value in '000' US$

Countries	1998-99	1999-2000	2000-2001	2001-2002	2002-03
India	422	381	88	-	-
Singapore	231	-	133	612	66
Japan	1	-	-	-	-
Kuwait	-	-	355	264	-
Srilanka	-	-	198	248	123
Lebanon	-	-	151	-	45
U.A.E	-	-	56	196	44
Pakistan	-	-	33	-	1
Thailand	-	10	28	67	42
Saudi Arabia	-	-	20	-	53
Madagascar	-	-	-	27	-
USA	-	-	-	-	39
Total :	654	391	1066	1414	402

ANNEXURE- III

No.67/1/2000-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti Dumping & Allied Duties
Udyog Bhawan, New Delhi-110011

INITIATION NOTIFICATION

15. 1.
the January, 2001

Subject: Initiation of anti-dumping investigation concerning import of lead acid batteries originating in or exported from Japan, Korea, China and Bangladesh

67/1/2000-DGAD- M/s. Exide Industries Limited and M/s. Amara Raja Batteries Limited have filed a petition for initiation of anti dumping investigation concerning the import of lead acid batteries from Japan, Republic of Korea, People's Republic of China and Bangladesh (hereinafter referred to as subject countries) in accordance with Rule 5(1) of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995.

2. **Domestic Industry:** The petition has been filed by M/s. Exide Industries Limited and M/s. Amara Raja Batteries Limited on behalf of the domestic industry. The petitioners have averred that there are five more producers of the product in the organized sector in India who incidentally are also importing lead acid batteries from subject countries. Also, there are a number of small producers in the un-organised sector.

Though M/s. Amara Raja Batteries Ltd., have made import of certain models of lead acid batteries from the subject countries which they themselves are not manufacturing, the volume and value of import is quite insignificant as compared with the annual production and sales of the subject goods by them. Therefore, the Authority has decided to ignore the imports made by M/s. Amara Raja Batteries Ltd., and include them in the definition of domestic industry for the purpose of filing the petition. On the basis of the evidence available, the petitioners account for more than fifty percent of the production of domestic industry and have the standing to file the petition on behalf of domestic industry.

3. **Product under consideration:** The product under consideration is "lead acid batteries". This falls within Chapter 85 of the Custom Tariff Act under the sub-heading 8507. The Custom classification is indicative only and not binding on the scope of investigation. It has been stated by the domestic industry that lead acid batteries have also been cleared by the Custom Authorities under sub-heading 8504 and 8506 as well. Batteries are accumulator of current/power which is discharged over a period of time.

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They are used in vehicles and also for various industrial uses, such as for back up power for UPS applications, control rooms, power stations, telecommunications etc.

It has been stated by the domestic industry that the statistics in the case of lead acid batteries are compiled in terms of number of units. But denoting the volume in terms of number of units may be misleading because different models have different power capacity and value. Apart from denoting the product in terms of units and value, it will be useful to have the information on the product in terms of lead content as there is a direct correlation between power and lead content of the battery which also gets reflected in terms of value or price. The direct correlation between the lead content in the battery and its associated costs and prices is also quite significant. It will, therefore, be meaningful to assess the volume, value as well as lead content of the product for the purpose of calculation and comparison of various parameters.

4. Countries involved: The petitioners have provided evidence of dumping of the product under consideration from subject countries and have requested for initiation of investigation against these countries.

5. Like Article: The petitioners have claimed that the goods produced by them are 'like article' to the goods originating in or exported from the subject countries. Therefore, for the purpose of investigation, the goods produced by the petitioners are being treated as 'like articles' of lead acid batteries (hereinafter referred to as subject goods) imported from the subject countries within the meaning of the Rules.

6. Normal Value: The petitioners have claimed normal value based on the constructed cost of production as well as on the basis of evidence regarding domestic prices in some of the subject countries of the subject goods. Sufficient *prima facie* evidence has been presented to the Designated Authority with regard to the normal value of subject goods in subject countries.

7. Export Price The export price has been claimed on the basis of the data obtained from Director General Commercial Intelligence & Statistics, Calcutta and compiled from secondary sources. Price adjustments have been claimed on account of landing charges, ocean freight, marine insurance, commission, port handling etc., to arrive at net export price. There is sufficient evidence of export price and the adjustments claimed for the subject goods from subject countries.

8. Dumping Margin: There is sufficient prima facie evidence that the normal value of the subject goods in the subject countries is significantly higher than the net export price indicating *prima facie* that the subject goods are being dumped by the exporters from the subject countries.

9. Injury and Causal Link: The petitioner has furnished evidence regarding the injury having taken place as a result of the allegedly dumped imports in the form of fall in their market share, price undercutting and lost contracts for the domestic industry. In addition to the material injury already inflicted on the domestic industry, the allegedly

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dumped imports are also threatening to cause more damage which will intensify the material injury already being suffered by them.

10. **Initiation of Anti Dumping Investigation:** The Designated Authority, in view of the foregoing paragraphs, initiates anti dumping investigations into the existence, degree and effect of alleged dumping of the subject goods originating in or exported from the subject countries

11. The period of investigation for the purpose of present investigations is 1st January 2000 to 30th September 2000 (9 months).

12. **Submission of Information:** The exporters and importers known to be concerned and domestic industry are being informed separately to enable them to file all information relevant in the form and manner prescribed. Any other party interested to participate in the present investigation may write to:

The Designated Authority
(Directorate General of Anti-Dumping & Allied Duties)
Government of India
Ministry of Commerce & Industry
Udyog Bhavan
New Delhi-110011

13. **Time Limit:** All information relating to this investigation should be sent in writing so as to reach the Authority at the above address not later than 40 days from the date of publication of this notification. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record their findings on the basis of the facts available on record in accordance with the Rules supra

14. **Inspection of Public File:** In terms of Rule 6 (7), any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

15. In case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

L.V. Saptharishi
Designated Authority

2nd January, 2002
ANNEXURE- IV

Notification No. 1 / 2002-Customs

WHEREAS in the matter of import of lead acid batteries, falling under heading 85.07 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in or exported from the People's Republic of China, Republic of Korea, Japan and Bangladesh and imported into India, the designated authority vide its preliminary findings, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 21st March, 2001, had come to the conclusion that-

(a) Lead Acid Batteries have been exported to India from China, Korea and Japan below their normal value;

(b) the Indian industry has suffered material injury and is further being threatened with material injury;

(c) the injury has been caused by the dumped imports from China, Korea and Japan;

(d) as per evidence available before the said authority at present volume of imports of subject goods from Bangladesh is de-minimis;

AND WHEREAS on the basis of the aforesaid findings of the designated authority, the Central Government had imposed an anti-dumping duty vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 41/2001-Customs, dated the 9th April, 2001, [G.S.R. 254 (E), dated the 9th April, 2001] published in Part II, Section 3, Sub-section (i) of the Gazette of India, Extraordinary, dated the 9th April, 2001;

AND WHEREAS the designated authority vide its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 7th December, 2001, has come to the conclusion that -

(a) Lead Acid Batteries have been exported to India from China, Korea, Japan and Bangladesh below their normal value during the period of investigation;

(b) The Indian industry has suffered material injury and is further being threatened with material injury;

(c) The injury has been caused by the dumped imports from China, Korea, Japan and Bangladesh;

AND WHEREAS M/s Daewoo International Corporation, Republic of Korea who are exporting the subject goods manufactured by M/s Delkor Corporation, Korea, have given an undertaking under rule 15 of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 2nd November, 2001, read with Corrigendum published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 3rd December, 2001, not to export Maintenance Free Lead Acid Automotive Batteries of the model No. mentioned in column (2) of the Table I annexed hereto, of description mentioned in corresponding entry in column (3) of the said Table I, the "landed value" of which is mentioned in corresponding entry in column (4) of the said Table I;

Table I

S. No.	Model No.	Description (AH CAPACITY RATING AT 20HR RATE)	Undertaking Unit Price on CIF Inland Container Depot New Delhi / Tuglakahbad basis (US$)
(1)	(2)	(3)	(4)
1.	NS40MF	12V 32 AH	12.93
2.	38B20R	12V 35 AH	14.74
3.	85B60K	12V 55 AH	19.58
4.	NX120-7MF	12V 80 AH	24.13
5.	N88	12V 88 AH	27.75
6.	N100	12V 100 AH	34.19
7.	N120	12V 120 AH	41.56
8.	N150	12V 150 AH	47.56

[Note.-All prices mentioned in the above Table I, are quoted in US Dollar per piece on Letter of Credit at sight basis and on Cost Insurance and Freight (CIF) Inland Container Depot New Delhi/ Tuglakhabad basis.]

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1), read with sub-section (5), of section 9A of the said Customs Tariff Act, and rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on the basis of the aforesaid final findings of the designated authority, hereby imposes anti-dumping duty on all imports of lead acid batteries falling under heading 85.07 of the Customs Tariff Act, originating in or exported from the country specified in column (2) of the Table II annexed hereto, and type of battery specified in Column (3) of the said Table II, when exported by the exporter or manufacturer mentioned in column (4) of the said Table II, equivalent to the difference between the amount mentioned in Column (5) of the said Table II and the landed value of import per Kg of the lead acid battery.

Table II

S. No.	Name of the Country	Type of battery	Exporter/manufacturer	Amount (US$ per Kg)
(1)	(2)	(3)	(4)	(5)
1.	People's Republic of China	(a)Industrial	1. M/s. Shenyang Matsushita Storage Battery Co. Ltd (SLMB) manufacturer or exports through trading company, namely, M/s. Panasonic Industrial Asia Pte. Ltd., Singapore.	N.a.
			2. M/s. BB Battery Co., manufacturer or exports through trading company, namely, M/s. National Trading Ltd., Hong Kong.	N.a.
			3. M/s. Shenzen Senry Battery Co. Ltd.	N.a.

				4. Other exporters/ manufacturers.	3.192
		(b) Automotive	(i)NMF	All exporters	2.532
			(ii)MF	All exporters	2.121
			(iii) Motorcycle	All exporters	3.930
2.	Republic of Korea	(a)Industrial		1. M/s Global and Yuasa Battery Co. Ltd.	N.a.
				2. M/s. NB Corporation	N.a.
				3. Other exporters / manufacturers	3.192
		(b) Automotive	(i) NMF	1. M/s. Global and Yuasa Battery Co. Ltd.	2.216
				2. Other exporters / manufacturers	2.532
			(ii) MF	1. M/s. Global and Yuasa Battery Co. Ltd	1.904
				2.M/s. Delkor Corpn.	N.a.
				3. Other exporters / manufacturers	2.121
			(iii) Motorcycle	All exporters	3.930
3.	People's Republic of Bangladesh	(a) Industrial		All exporters	3.192
		(b) Automotive	(i)NMF	All exporters	2.532
			(ii) MF	All exporters	2.121
			(iii) Motorcycle	All exporters	3.930
4.	Japan	(a) Industrial		All exporters	3.192
		(b) Automotive	(i) NMF	All exporters	2.532
			(ii) MF	All exporters	2.121
			(iii) Motorcycle	All exporters	3.930

Note.- In the Table II, "N.a." , "NMF" and "MF" shall have the meanings "Not applicable", " non-maintenenance free" and "maintenance free" assigned to them respectively.

Provided that no anti-dumping duty shall be imposed on the Maintenance Free Lead Acid Automotive Batteries of the model No. mentioned in column (2) of the said Table I, of description mentioned in corresponding entry in column (3) of the said Table I, when exported by M/s Daewoo International Corporation, Republic of Korea and imported into India on or after the date of this notification, if the landed value, per unit, of such Maintenance Free Lead Acid Automotive Batteries is equal to or higher than the price undertaking mentioned in corresponding entry in column (4) of the said Table I submitted by the said M/s Daewoo International Corporation, Republic of Korea.

2. The anti-dumping duty imposed under this notification shall be levied with effect from the date of the imposition of the provisional duty, i.e. the 9th April, 2001, and shall be paid in Indian currency.

Explanation. - For the purposes of this notification,-

(a) "landed value" means the assessable value as determined under the Customs Act, 1962 (52 of 1962) and includes all duties of Customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the said Customs Tariff Act;

(b) rate of exchange applicable for the purposes of calculation of the anti-dumping duty shall be the rate, which is specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred under sub-clause (i) of clause (a) of sub-section (3) of section 14 of the said Customs Act and the relevant date for determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

Vivek Prasad
Under Secretary to the Government of India

F. No. 354/20?/2001-TRU

ANNEXURE-V

Dummy Table-1
Price Structure and Export of Motorcycle/Automotive Batteries into India
(Under period of investigation)

Product Grade / Parameter	Motorcycle/Automotive Battery Exported to India							
1.Ex-factory cost $								
2. Net profit/loss before tax								
3. Unit selling price (ex-factory)								
4.Selling price / unit in ACU $ + (Packing + inland freight)								
5. Unit exported								
6. Quantity in Kg.								
7. C&F value of export								
8.Export Rate/Unit $								

Dummy Table-2
Price Structure and Export of Motorcycle/Automotive Batteries in the Home Market
(Under period of investigation)

Product Grade / Parameter	Motorcycle/Automotive Battery Price Structure at Home Market Sales							
1. Ex-factory cost $								
2. Net profit/loss before tax								
3. Unit selling price (ex-factory)								
4. Total Sales (unit) at Home Market								
5. Quantity in Kg.								
6. Sales value								
7.Export Rate/Unit $								

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