



25 February 2021

(21-1641)

Page: 1/2

Original: English

**PAKISTAN – ANTI-DUMPING MEASURES ON BIAXIALLY ORIENTED POLYPROPYLENE
FILM FROM THE UNITED ARAB EMIRATES**

**NOTIFICATION OF AN APPEAL BY PAKISTAN UNDER ARTICLE 16.4 AND
ARTICLE 17.1 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE
SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 20(1) OF THE
WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 22 February 2021, from the delegation of Pakistan, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures for Appellate Review, Pakistan hereby notifies the Dispute Settlement Body of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the Panel Report entitled *Pakistan – Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates* (WT/DS538/R), which was circulated on 18 January 2021 (the "Panel Report"). Pursuant to Rules 20(1) and 21(1) of the Working Procedures for Appellate Review, Pakistan is simultaneously filing this Notice of Appeal and its Appellant's Submission with the Appellate Body Secretariat.

2. For the reasons to be further elaborated in its submission to the Appellate Body, Pakistan appeals, and requests the Appellate Body to reverse, certain findings and conclusions of the Panel, with respect to the following errors contained in the Panel Report:¹

I. The Panel erred in finding that Article 3.4 of the Anti-Dumping Agreement requires an investigating authority to examine the impact of the dumped imports on the domestic industry, effectively requiring the authority to conduct a causation and non-attribution analysis with respect to the individual injury factors

3. Pakistan appeals the Panel's finding that Article 3.4 requires an evaluation of the impact of the dumped imports on the domestic industry. This finding is based on an incorrect interpretation of Article 3.4. The Panel interprets Article 3.4 as requiring an investigating authority to evaluate not only the state of the domestic industry, but also to analyse the effects of the dumped imports. Effectively, the Panel reads Article 3.4 as requiring also a causation and non-attribution analysis for the various individual factors. This is incorrect, because the examination of the cause of the injury is a subsequent analytical step, undertaken under Article 3.5. The Panel thus duplicates the analytical step required under Article 3.5, and effectively commingles and collapses the requirements of Articles 3.4 and 3.5. Pakistan also appeals the Panel's findings and conclusions concerning the NTC's analysis of various injury factors, given that those findings and conclusions are based on the Panel's incorrect legal standard under Article 3.4.

¹ Pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Pakistan's right to refer to other paragraphs of the Panel Report in the context of its appeal.

4. Pakistan thus requests the Appellate Body to reverse the Panel's findings and conclusions and the Panel's legal interpretations contained in paragraphs 7.352, 7.369, 7.383, 7.391, 7.393, 7.400, 7.404, 7.406, 7.410, and 7.413 - 7.415, as well as paragraph 8.1.a.v of the Panel Report.

II. The Panel erred in finding that the "other factors" raised by Taghleef during the investigation were "known" to the NTC within the meaning of Article 3.5 of the Anti-Dumping Agreement and required the NTC to analyse those factors

5. Pakistan appeals the Panel's finding that certain factors pointed out by the UAE exporter Taghleef during the investigation were "known" to the NTC within the meaning of Article 3.5 of the Anti-Dumping Agreement, such that the NTC was required to conduct a non-attribution analysis for those factors. Taghleef merely reproduced a list of six factors mentioned in the domestic producer's 2009 Annual Report and failed to provide any additional evidence that would have substantiated its assertion that these factors were causing injury at the same time as the dumped imports. Indeed, Taghleef did not even articulate a proper request to the NTC during the investigation to examine these factors as possible factors causing injury to the domestic industry. The Panel thus erred in finding that Taghleef's bare reference to the annual report of the domestic producer was sufficient to "clearly raise" the factors at issue and to make those factors "known" to the authority, thereby triggering the NTC's duty to analyse those factors.

6. Therefore, Pakistan requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.456-7.460, as well as paragraph 8.1.a.vi of the Panel Report.

III. The Panel erred in finding that the sunset review determination was inconsistent with Article 11.3 of the Anti-Dumping Agreement because it was allegedly based on determinations of dumping margins that were inconsistent with Article 2

7. Pakistan submits that the Panel erred in finding that the NTC's Sunset Review Determination was inconsistent with Article 11.3 of the Anti-Dumping Agreement, on the grounds that, in determining the likelihood of dumping, the NTC relied on dumping margins allegedly calculated inconsistently with Article 2 of the Anti-Dumping Agreement. Contrary to the Panel's finding, the NTC never intended to calculate a company-specific dumping margin and instead calculated country-wide dumping estimates, which is entirely permissible under Article 11.3 and is not subject to Article 2. The Panel's finding mischaracterizes the nature of the NTC's analysis and effectively requires investigating authorities to calculate full-fledged company-specific dumping margins as soon as they seek to quantify their assessment of the likelihood of continuation or recurrence of dumping. This is contrary to Article 11.3. Alternatively, should the Appellate Body consider the Panel's finding concerning the NTC's analysis to be of a factual nature, Pakistan submits that the Panel exceeded the bounds of its discretion as the trier of facts, engaged in an analysis that lacked objectivity and even-handedness, and thereby acted inconsistently with Article 11 of the DSU and Article 17.6(i) of the Anti-Dumping Agreement.

8. Therefore, Pakistan requests the Appellate Body to reverse the Panel's findings and conclusions contained in paragraphs 7.554-7.560, 7.562, and 7.566-7.569, as well as paragraph 8.1.d.i of the Panel Report.

IV. Conclusion

9. Pakistan respectfully requests the Appellate Body to reverse the findings and conclusions of the Panel identified in this Notice of Appeal. Pakistan notes that the above grounds of appeal are without prejudice to the more detailed arguments developed in Pakistan's Appellant's Submission.
