



13 February 2015

(15-0910)

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Original: English

**EUROPEAN UNION – COUNTERVAILING MEASURES ON CERTAIN
POLYETHYLENE TEREPHTHALATE FROM PAKISTAN**

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY PAKISTAN

The following communication, dated 12 February 2015, from the delegation of Pakistan to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 17 October 2014, Pakistan requested consultations with the European Union (EU) pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994). These consultations related to the imposition of provisional and definitive countervailing duties imposed by the EU on imports of certain polyethylene terephthalate from Pakistan, as well as to certain aspects of the investigation underlying those measures.

Consultations were held on 17 December 2014 with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute.

In accordance with Article 4.7 of the DSU, therefore, Pakistan requests that the Dispute Settlement Body (DSB) establish a panel to examine this matter. Pursuant to Article 6.2 of the DSU, Pakistan proceeds *infra* to identify the specific measures at issue and to provide a brief summary of the legal basis of the complaint.

A. THE MEASURES AT ISSUE

The measures at issue are the provisional and definitive countervailing duties imposed by the EU on imports of certain polyethylene terephthalate from Pakistan, as well as certain aspects of the underlying investigation and determinations related thereto, as set forth in the following instruments:

- Commission Regulation (EU) No 473/2010 of 31 May 2010, Imposing a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates, OJ L134/25.
- Council Implementing Regulation (EU) 857/2010 of 27 September 2010, Imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates, OJ L254/10.

In addition to these legal instruments, this request also covers any amendments, extensions, related instruments or practices, including methodologies, the results of any review proceedings, whether initiated prior to or following this panel request or the establishment of the panel, as well as modifications of the original measures triggered by any proceedings under EU law, including proceedings before the European Court of Justice.

B. LEGAL BASIS OF THE COMPLAINT

In Pakistan's view, the measures at issue are inconsistent with the EU's obligations under the SCM Agreement and the GATT 1994 for the following reasons:

- The EU determined that the "Manufacturing Bond Scheme" (MBS) is a countervailable subsidy that is contingent upon export performance. This determination appears to be inconsistent with Articles 1 and 3, and Annexes I, II, and III of the SCM Agreement, as well as Article VI of the GATT 1994. In particular:
 - the EU appears to have acted inconsistently with Articles 1.1(a)(1)(i), 1.1(a)(1)(ii), and 3.1(a) and Annexes I(h), I(i), II(I)(1)-(2), II(II)(1)-(2), III(I), and III(II)(1)-(3) of the SCM Agreement, as well as Article VI of the GATT 1994, by determining that the MBS constituted a remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product; and,
 - the EU appears to have acted inconsistently with Articles 1.1(a)(1)(i), 1.1(a)(1)(ii), and 3.1(a) and Annexes I(h), I(i), II(I)(1)-(2), II(II)(1)-(2), III(I), and III(II)(1)-(3) of the SCM Agreement, as well as Article VI of the GATT 1994, by determining that the entirety of the duty refunds under the MBS scheme – rather than just the excess portion of these refunds – constituted an export subsidy.
- The EU determined that the "Long-Term Financing of Export-Orientated Projects" (LTF-EOP) programme constituted a countervailable subsidy that is contingent upon export performance and included this subsidy in its calculation of the subsidization margin. This determination appears to be inconsistent with Articles 1, 3, 14, and 19 of the SCM Agreement as well as Article VI of the GATT 1994. In particular:
 - the EU appears to have acted inconsistently with Articles 1.1(a)(1)(i), 1.1(a)(1)(iv), 1.1(b), 3.1(a), the chapeau of Article 14, Articles 14(b) and 19.3 of the SCM Agreement, as well as Article VI of the GATT 1994, by failing to explain adequately the application of its method to calculate the benefit in the case at hand and by choosing an inappropriate interest benchmark for calculating the amount of subsidy during the investigation period; and,
 - the EU appears to have acted inconsistently with Articles 1.1(b), 3.1(a), 14(b), and 19.3 of the SCM Agreement, as well as Article VI of the GATT 1994, in its allocation of the amount of the subsidy.
- The EU determined that a causal link existed between the allegedly subsidized imports and the material injury suffered by the domestic industry. In doing so, the EU appears to have acted inconsistently with Article 15.5 of the SCM Agreement by failing to ensure that injurious effects of known factors, including *inter alia* imports from other sources, competition from domestic producers not included in the domestic industry, economic downturn, and low oil prices, were not improperly attributed to the allegedly subsidized imports.
- The EU appears to have acted inconsistently with Articles 12.6 and 12.8 of the SCM Agreement by failing to provide the Pakistani exporter with the results of the EU's verification visits to that exporter and by failing to inform all interested parties of the essential facts under consideration. Moreover, during the verification visits, the EU appears to have acted inconsistently with Article 12.6 and Annex VI(1)-(8) of the SCM Agreement by failing to make a thorough and objective assessment of the matter, including a proper establishment of the facts.
- The EU appears to have acted inconsistently with Articles 22.3 and 22.4 of the SCM Agreement by failing to provide in sufficient detail the findings, explanations, and conclusions reached with respect to the existence of the subsidies allegedly arising under the MBS and LTF-EOP programmes and the amount of subsidization, as well as with respect to the causation and non-attribution analysis, as described above.

It appears to Pakistan that the foregoing aspects of the EU's determinations cannot be reconciled with Articles 10, 19.1, and 32 of the SCM Agreement, and the specific provisions cited above.

Pakistan considers that the measures described above nullify and impair benefits accruing to Pakistan under the SCM Agreement and the GATT 1994.

C. REQUEST FOR THE ESTABLISHMENT OF A PANEL

In the light of the above, Pakistan requests, pursuant to Articles 4.7 and 6 of the DSU, Article 30 of the SCM Agreement and Article XXIII:2 of the GATT 1994, that the DSB establish a panel to examine this matter. Pakistan further requests that the panel have the standard terms of reference, as set forth in Article 7.1 of the DSU.

Pakistan requests that this request be placed on the agenda of the DSB meeting to be held on 23 February 2015.
