



29 January 2018

(18-0665)

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Original: English

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

**REQUEST FOR CONSULTATIONS BY THE UNITED ARAB EMIRATES**

The following communication, dated 24 January 2018, from the delegation of the United Arab Emirates to the delegation of Pakistan and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

1. My authorities have instructed me, on behalf of the Government of the United Arab Emirates ("UAE"), to request consultations with the Government of Pakistan pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of the GATT 1994* ("Anti-Dumping Agreement"), with regard to Pakistan's anti-dumping measure on imports of biaxially oriented polypropylene ("BOPP") film from, among others, the UAE dated 9 April 2015, imposing definitive anti-dumping duties,<sup>1</sup> as well as any amendments thereto or extensions thereof, and any related measures,<sup>2</sup> including the sunset review determination published in the Official Gazette on 1 December 2016 by which the anti-dumping measure was extended.<sup>3</sup>

2. This measure appears to be inconsistent with Pakistan's obligations under certain provisions of the GATT 1994 and the Anti-Dumping Agreement.

3. In particular, the UAE considers that the anti-dumping measure on BOPP film appears to be inconsistent with at least the following provisions:

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<sup>1</sup> Notice of Final Determination and Levy of Definitive Antidumping Duties on Imports of Biaxially [sic] Oriented Poly Propylene Film into Pakistan Originating In and/or Exported from the People's Republic of China, Sultanate of Oman, Kingdom of Saudi Arabia and United Arab Emirates (9 April 2015), publication reference 22/2012/NTC/BOPP/UAE, imposing definitive antidumping duties on imports from, among others, the UAE, with effect from the date of issuance of the notice till August 14, 2015. As stated in the above referenced Notice of Final Determination, the investigation was initiated on 23 April 2012. In this decision of 9 April 2015, the National Tariff Commission has "maintained" the previous final determination dated 4 February 2013 imposing definitive anti-dumping duties with effect from 14 August 2012.

<sup>2</sup> The Pakistan National Tariff Commission has published online the "Investigation Notices" which it considers to relate to the BOPP film investigation. See website of National Tariff Commission, <https://ntc.gov.pk/antidumping-investigation-notices/>. In addition, it is noted that an earlier investigation by Pakistan on BOPP Film was aborted following a challenge in the Islamabad High Court. See, Notice of Initiation Anti-dumping Investigation against Alleged Dumping of BOPP Film Originating In and/or Exported from the People's Republic of China, Sultanate of Oman, Kingdom of Saudi Arabia and United Arab Emirates (27 September 2010, publication reference 22/2010/NTC/BOPP).

<sup>3</sup> Notice of Conclusion of Sunset Review and Continuation of Anti-dumping Duties Imposed on Dumped Imports of Biaxially Oriented Polypropylene (BOPP) Film Imported from China, Oman, KSA and UAE (1 December 2016; publication reference 16/2008/NTC/BOPP Film/SR/14); Report on the Conclusion of Sunset Review and Continuation of Anti-dumping Duties Imposed on Dumped Imports of Biaxially Oriented Polypropylene (BOPP) Film Imported from China, Oman, KSA and UAE (28 November 2016; publication reference 16/2008/NTC/BOPP FILM/SR/14).

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- Articles 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement, because there was insufficient accurate and adequate evidence to justify the initiation of the anti-dumping investigation and the application should therefore have been rejected;
  - Articles 1, 2.1, 3.1, 9 and 11.1 of the Anti-Dumping Agreement, because the determination of dumping and resulting injury was not based on relevant and "positive" evidence justifying the imposition of the anti-dumping measure at the time of its adoption, and because the measure remained in force without positive evidence that it was necessary to counteract dumping that is causing injury;
  - Article 5.10 of the Anti-Dumping Agreement, because the investigation was not concluded within 18 months after its initiation;
  - Article 6.8 and Annex II of the Anti-Dumping Agreement, because the investigating authorities unduly resorted to the use of facts available and rejected cost information which was verifiable, appropriately submitted so that it could be used without undue difficulties and supplied in a timely manner by the exporter acting to the best of its ability and because the authorities never gave the reasons or explained the basis of their conclusion that such information could not be used in the investigation and failed to give the exporter an opportunity to provide further explanations in this respect;
  - Articles 2.2.1.1 and 2.2.2 of the Anti-Dumping Agreement, because the normal value was determined by relying on cost data that did not reasonably reflect the costs associated with the production and sale of the product under consideration and because the amounts for administrative, selling and general costs were not based on actual data pertaining to the production and sale of the like product;
  - Articles 2.2 and 2.2.1 of the Anti-Dumping Agreement, because the improper rejection and replacement of verifiable cost data resulted in the unwarranted finding that certain sales were not made in the ordinary course of trade which, in turn, resulted in the erroneous construction of normal value based on inflated cost information;
  - Article 2.4 of the Anti-Dumping Agreement, because of the failure to make due allowance for a difference in the level of trade which was required to ensure a fair comparison between the export price and the normal value;
  - Article 3.1 of the Anti-Dumping Agreement, because of a failure to make a determination of injury based on positive evidence and involving an objective examination;
  - Article 3.2 of the Anti-Dumping Agreement, because of a failure to properly consider whether there has been a significant increase in the volume of dumped imports, either in absolute terms or relative to domestic production or consumption;
  - Article 3.2 of the Anti-Dumping Agreement, because of a failure to properly consider whether there has been significant price undercutting or whether the effect is otherwise to depress or suppress prices, which otherwise would have occurred, to a significant degree;
  - Article 3.4 of the Anti-Dumping Agreement, because of a failure to properly evaluate all relevant economic factors and indices having a bearing on the state of the domestic industry, including the margin of dumping, and conduct an objective examination of the consequent impact of the imports on domestic producers;
  - Article 3.5 of the Anti-Dumping Agreement, because of the failure to establish a genuine and substantial relationship of cause and effect between the alleged dumped imports and the injury to the domestic industry, including by failing to ensure that injury caused by other factors was not attributed to the dumped imports;
  - Articles 6.2 and 6.4 of the Anti-Dumping Agreement, because of the failure to provide respondent UAE exporters with full opportunity for the defence of their interests and the failure to provide timely opportunities to see all information that is relevant to the presentation of their cases and that is not properly considered to be confidential and to prepare presentations on the basis of this information;
  - Articles 6.5 and 6.5.1 of the Anti-Dumping Agreement, because the investigating authorities: (a) treated as confidential the information provided by the interested parties without good cause shown; (b) failed to require the applicants to furnish a

non-confidential summary thereof; and (c) where such summaries were provided, they were not in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence;

- Article 6.9 of the Anti-Dumping Agreement, because the investigating authorities failed to inform the interested parties of the essential facts under consideration which formed the basis for the decision to impose definitive anti-dumping measures;
- Articles 11.1, 11.2 and 11.3 of the Anti-Dumping Agreement, because the anti-dumping measure was extended on the basis of a sunset review that was not grounded on a sufficient factual basis and maintaining the measure therefore appears to be inconsistent with the obligation that the anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. In particular, it appears that:
  - Pakistan failed to base the initiation of its sunset review on sufficient evidence that the termination of the anti-dumping duty measure would likely lead to a continuation or recurrence of dumping, in violation of procedural and evidentiary requirements of Articles 11.1 and 11.2 of the Anti-Dumping Agreement; and
  - Pakistan's determination of the likelihood of continuation or recurrence of dumping and injury misapplied the "likelihood" standard, lacked an adequate factual basis, and was based on an undue presumption in favor of maintaining the duties, in violation of Articles 2, 11.1 and 11.3 of the Anti-Dumping Agreement.
- Article 11.4 of the Anti-Dumping Agreement, because the provisions of Article 6 regarding evidence and procedure, including among others the requirements of Articles 6.2, 6.4, 6.5, 6.7 and 6.8 of the Anti-Dumping Agreement, were not respected in the sunset review and because the sunset review was not carried out expeditiously and was not concluded within 12 months of the date of initiation of the review;
- Articles 12.1, 12.2 and 12.3 of the Anti-Dumping Agreement, because Pakistan failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law the investigating authorities considered material, as well as all relevant information on the matters of fact and law and reasons which have led to the imposition of the final measure and the continuation of the duties as a result of the sunset review; and
- Pakistan's anti-dumping measure on the subject imports also appears to be inconsistent with Articles 1 and 18.1 of the Anti-Dumping Agreement and Articles VI:1 and VI:2 of the GATT 1994 as a consequence of the apparent breaches of the Anti-Dumping Agreement described above.

4. The UAE considers that the above-described measures also appear to nullify or impair the benefits accruing to the UAE directly or indirectly under the cited agreements.

5. The UAE reserves the right to raise additional factual and legal issues, and to address additional measures and claims regarding the above matters, in the course of the consultations and in any request for the establishment of a panel.

6. The UAE looks forward to receiving the reply by Pakistan to this request and to fixing a mutually acceptable date and venue for consultations.

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