



18 May 2018

(18-3027)

Page: 1/5

Original: English

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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED ARAB EMIRATES

The following communication, dated 15 May 2018, from the delegation of the United Arab Emirates to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

1. On 24 January 2018, the Government of the United Arab Emirates ("UAE") requested 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 measures on imports of biaxially oriented polypropylene ("BOPP") film from, among others, the UAE dated 9 April 2015, imposing definitive anti-dumping duties,¹ as well as any amendments thereto or extensions thereof, and any related measures,² including the sunset review determination published in the Official Gazette on 1 December 2016 by which the anti-dumping measures were extended.³
2. The imposition of definitive anti-dumping duties on BOPP film from the UAE, and the continuation of such duties following the sunset review determination appear to be inconsistent with Pakistan's obligations under certain provisions of the GATT 1994 and the Anti-Dumping Agreement.
3. Consultations were held on 27 March 2018 with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute.
4. Therefore, the UAE respectfully requests, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the Anti-Dumping Agreement that the Dispute Settlement Body

¹ 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.

² 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).

³ 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).

establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

5. Pursuant to Article 6.2 of the DSU, the UAE proceeds below to provide a brief summary of the legal basis of the complaint. The measures at issue are the definitive anti-dumping duties imposed by Pakistan on BOPP film from the UAE and their continuation as per the legal instruments referenced above.

6. The UAE considers that the anti-dumping measures on BOPP film appear to be inconsistent with at least the following provisions:

- 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. In particular, the investigation was initiated on 23 April 2012 based on an application that was dated 12 April 2010 and which was based on outdated dumping and injury data which related to a period that ended in December 2009. The application therefore did not contain reasonably available relevant evidence on dumping, injury and causation. The Pakistan investigating authorities failed to examine the accuracy and adequacy of the information contained in the application for purposes of initiating the investigation on 23 April 2012. The application should have been rejected since it did not contain sufficient relevant evidence of either dumping or injury to justify proceeding with the case.
- Articles 1, 2.1, 3.1, 9.1, 9.3, 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 measures at the time of their adoption, and because the measures remained in force without positive evidence that it was necessary to counteract dumping that was causing injury. In particular, since the period of investigation for dumping and injury ended in June 2010, the evidence on which the final determination was based was not informative of the situation at the time of the imposition of the duties. The absence of a real-time link between the imposition of the measures and the data on which the determination was made means that the measures were imposed without "positive" evidence of dumping, injury and the causal link and that there was therefore also no basis for maintaining the measures.
- Article 5.10 of the Anti-Dumping Agreement, because the investigation was not concluded within 18 months after its initiation. In particular, the investigation was initiated on 23 April 2012 but the investigation was only concluded with the final determination on 9 April 2015, almost three years later. Alternatively, if the investigation should be considered to have been concluded with the first "final" determination dated 4 February 2013, the investigation was also not concluded within 18 months since the investigation was first initiated on 27 September 2010, and the investigation thus took more than 28 months to conclude.
- Article 6.8 and Annex II of the Anti-Dumping Agreement, because the investigating authorities unduly 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. In particular, the Pakistan investigating authorities rejected the cost information provided by the UAE exporter that specifically related to the cost to make and sell BOPP film in the UAE and instead relied on general make and sell data for worldwide sales.
- 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. In particular, the Pakistan investigating authorities disregarded the specific cost data that were provided by the UAE exporter, despite the fact that the provided data were the actual data as reflected in the records of

the producer which were kept in accordance with the generally accepted accounting principles of the UAE and reasonably reflected the costs associated with the production and sale of the product under consideration, based on the producer's historically utilized allocation of costs.

- 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. In particular, the finding that sales were made below cost and the construction of the normal value was based on inflated cost data that did not accurately reflect the costs associated with the production and sale of the product under consideration in the UAE and instead relied on general make and sell data for worldwide sales.
- 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. In particular, since domestic sales were made to end-users while export sales were made to distributors, the Pakistan investigating authorities failed to make the comparison between normal value and export price at the same level of trade and failed to indicate what information was necessary to ensure a fair comparison, should the evidence of sales at different levels of trade not have sufficed.
- Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement, because of a failure to make a determination of injury based on positive evidence and involving an objective examination. In particular, the determination of injury and causation was based on data that covered a period of investigation which ended in June 2010, and such outdated information therefore did not constitute "positive evidence" as it was not relevant or probative of the state of the domestic industry at the time of the imposition of the measures.
- Articles 3.1 and 3.2 of the Anti-Dumping Agreement, because of a failure to properly consider whether there was a significant increase in the volume of dumped imports, either in absolute terms or relative to domestic production or consumption. In particular, the Pakistan investigating authorities' determination fails to objectively consider whether the alleged increase is "significant" and does not appear to have been based on an objective examination of the trends given the significant decrease in the volume of allegedly dumped imports including in the most recent part of the period of investigation.
- Articles 3.1 and 3.2 of the Anti-Dumping Agreement, because of a failure to properly consider whether there was significant price undercutting or whether the effect is otherwise to depress or suppress prices, which otherwise would have occurred, to a significant degree. In particular, the Pakistan investigating authorities failed to objectively consider the explanatory force of the allegedly dumped imports for the price effects which were simply in line with international market developments as well as costs and failed to undertake an objective examination of the price effects of the alleged dumped imports given, among others, the absence of price suppression during the period of investigation, the significant domestic price increase during the period of investigation including in the most recent part of the period of investigation and the absence of price undercutting for a significant part of the period of investigation.
- Articles 3.1 and 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. In particular, the Pakistan investigating authorities:
 - Failed to "evaluate" all relevant factors and instead simply summarized the results of the various factors concluding that any negative developments during the period of investigation indicated that the domestic industry suffered material injury without undertaking a qualitative and holistic assessment of these factors;
 - Failed to examine "all" relevant factors since, for example, the margin of dumping was not evaluated;

- Failed to provide a reasoned and adequate explanation of the explanatory force of the allegedly dumped imports in respect of the examined injury factors, in particular in the light of evidence on the record that revealed that other factors explained the developments of certain injury factors such as, for example, sales, profits and losses, productivity, salaries and return on investment; and
 - Failed to provide a reasoned and adequate explanation of the determination of material injury given, among others, the many injury factors that trended positively, the strong market share of the domestic producer constituting the domestic industry, the complete capacity utilization of the domestic producer and the lack of significant negative effects of other injury factors, in particular also during the most recent part of the period of investigation.
- Articles 3.1 and 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. In particular, the Pakistan investigating authorities simply based the determination on a partial correlation in time thus failing to undertake an objective examination of the genuine and substantial nature of the alleged causal relationship taking into account the entire period of investigation and otherwise failed to separate and distinguish the injury caused by other factors such as, among others, the global financial crisis that affected the industry in 2009 as well as other factors that were on the record and explained a number of the injury factor developments.
- Articles 6.2 and 6.4 of the Anti-Dumping Agreement, because of the failure to provide the respondent UAE exporter with the full opportunity to defend its interests and the failure to provide timely opportunities to see all information that was relevant to the presentation of its case and that is not properly considered to be confidential and to prepare presentations on the basis of this information, in particular with respect to the reasons for the rejection of the cost data, the failure to conduct an on-spot verification and the refusal to make due allowance for the difference in the level of trade.
- 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 domestic producer 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. In particular, the Pakistan investigating authorities failed to meet these obligations in respect of the information contained in the application as well as the injury related information in the questionnaire responses of the domestic producer.
- 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, in particular with respect to the determination of dumping, including the rejection of the relevant cost data and the refusal to make due allowance for differences in the level of trade.
- Articles 11.1, 11.2 and 11.3 of the Anti-Dumping Agreement, because the anti-dumping measures were extended on the basis of a sunset review that was not grounded on a sufficient factual basis and maintaining the measures 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 measures 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 since it based the decision on an application that failed to provide forward looking information and was based on outdated information; and

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- 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. In particular, the Pakistan investigating authorities:
 - Calculated a dumping margin by unduly disregarding actual domestic sales and export prices and constructing normal value based on inflated cost of production as compared with a constructed landed costs;
 - Based their determination of a likelihood of continuation or recurrence of dumping and injury on unsubstantiated assumptions rather than facts as they simply assumed that any positive developments during the period of review was a result of the duties and that the expiry of the duties would necessarily have a negative effect on the state of the industry and thus a likely recurrence of injury without undertaking a forward-looking analysis;
 - Failed to objectively determine the probability that material injury was likely to recur given the fact that the domestic producer constituting the domestic industry enjoys a close to monopoly position in the market and performed well during the period of review; and
 - Failed to address the lack of explanatory force of the allegedly dumped imports with respect to a number of injury factors such as, for example, profitability, since these factors were clearly unrelated to the alleged dumped imports.
 - 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 including, among others, with respect to the lack of disclosure of the application and related injury information such as on sales, sales prices, costs, inventories, production, profits, etc. 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 since the sunset review investigation was initiated on 4 August 2015 while a notice of conclusion of the sunset review was published only on 1 December 2016, close to 16 months later and thus neither expeditiously nor within 12 months.
 - 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 measures and the continuation of the duties as a result of the sunset review; and
 - Pakistan's anti-dumping measures on the subject imports also appear 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.

7. 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.

8. Therefore, the UAE respectfully requests, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the Anti-Dumping Agreement that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

9. The UAE further asks that this request for the establishment of a panel be placed on the agenda of the next meeting of the Dispute Settlement Body to be held on 28 May 2018.
