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SOUTH AFRICA – PROVISIONAL ANTI-DUMPING DUTIES ON PORTLAND CEMENT FROM PAKISTAN

REQUEST FOR CONSULTATIONS BY PAKISTAN

The following communication, dated 9 November 2015, from the delegation of Pakistan to the delegation of South Africa and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The Islamic Republic of Pakistan ("Pakistan") hereby requests consultations with the Republic of South Africa ("South Africa") pursuant to Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 17.3 of the Agreement on Implementation of Article VI of the GATT 1994 ("*Anti-Dumping Agreement*") and Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") with respect to the imposition of provisional anti-dumping measures by South Africa on the importation of certain Portland cement products from Pakistan.

The provisional anti-dumping duties were imposed by South Africa through Notice No. 391, published in *Government Gazette* No. 38783 of 15 May 2015. South Africa initiated the anti-dumping investigation at issue through Notice No. 675, published in *Government Gazette* No. 37915 of 22 August 2014. The provisional anti-dumping duties were based on the International Trade Administration Commission of South Africa's "Report No. 495: Investigation into the alleged dumping of Portland cement originating in or imported from Pakistan: Preliminary determination" of 29.04.2015.

Pakistan considers that these measures are inconsistent with the following provisions of the *Agreement on the Implementation of Article VI of the GATT 1994* (the "Anti-Dumping Agreement") and the GATT 1994:

- (1) Article 2.4 of the Anti-Dumping Agreement, because South Africa failed to make a fair comparison between normal value and export price for the investigated Pakistani exporters, by failing to make reasonable and justified adjustments to normal value and export price as demonstrated by the exporters, including but not limited to, adjustments for packaging costs; costs of payment terms; discounts and rebates; selling, general and administrative costs; differences in physical characteristics; taxes; and levels of trade.
- (2) Article 2.6 of the Anti-Dumping Agreement, because South Africa failed to clearly define the scope of the like product/product under investigation. The product subject to provisional duties is "Portland cement", whereas South Africa's investigation and injury determination were focused only on bagged cement.
- (3) Articles 3.1, 3.2, 3.4, 3.5, 3.6, and 12.1.1(i) of the Anti-Dumping Agreement, because South Africa failed to make an objective examination of injury, on the basis of positive evidence, by not conducting its injury analysis on the basis of the entire product under investigation (i.e., Portland cement, including both bulk and bagged cement) and instead limiting its injury analysis to bagged cement and disregarding sales by the domestic industry of bulk cement.

- (4) Articles 3.1, 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement, because South Africa failed to make an objective examination of injury, on the basis of positive evidence, by using an extended period of investigation of four years for the injury and causation analysis and by not properly examining the evidence in the light of trends over that period.
- (5) Articles 3.1, 3.4, and Article 3.5 of the Anti-Dumping Agreement, because South Africa failed to make an objective examination, on the basis of positive evidence, that the dumped imports are, through the effects of dumping, causing injury, as South Africa failed to examine objectively the temporal relationship between the alleged dumping and the alleged worsening of the condition of the domestic industry, especially by failing to consider the effects of the decartelization of the domestic cement producers.
- (6) Articles 6.2, 6.8, and paragraph 6 of Annex II of the Anti-Dumping Agreement, because South Africa failed to respond to certain crucial questions posed by interested parties during the investigation, thus denying them a full opportunity for the defence of their interests and, also, by disregarding certain evidence and information supplied by interested parties without giving reasons and without affording them the opportunity to provide further explanations.
- (7) Articles 6.1.3 and 6.5 of the Anti-Dumping Agreement, because South Africa failed to ensure the prompt availability of the full text of the written application. As a result, the main figures about the South African industry were omitted or improperly indexed.
- (8) Articles 6.2, 6.4, and 6.5 of the Anti-Dumping Agreement, because South Africa failed to provide timely opportunities for all interested parties to see all non-confidential information relevant to the defence of their interests.
- (9) Articles 6.5.1 and 6.5.2 of the Anti-Dumping Agreement because South Africa failed to request the domestic industry to provide summaries of confidential information so as to permit a reasonable understanding of the substance of the confidential information.
- (10) Article 12.2.1, and, in particular, Articles 12.2.1(iv) and (v) of the Anti-Dumping Agreement, because in its public notice of the imposition of provisional measures, or in a separate report, South Africa failed to set forth sufficiently detailed explanations of the preliminary determination of injury, together with references to the matters of fact and law which have led to arguments being accepted or rejected, or the main reasons leading to the determination.

For these reasons, Pakistan considers that South Africa's investigation and measures cannot be reconciled with Article VI of the GATT 1994, Articles 1 and 18 of the Anti-Dumping Agreement, and the specific provisions cited above. In the light of these apparent inconsistencies, Pakistan considers that South Africa's imposition of provisional duties was contrary to Article 7.1 of the Anti-Dumping Agreement.

In addition to the legal instruments embodying the measures at issue, this request also covers any amendments, extensions, related instruments, and practices. Pakistan reserves its rights to raise additional factual and legal issues during the course of the consultations and in any request for the establishment of a panel.

We look forward to receiving South Africa's response to this request in due course in accordance with Article 4.3 of the DSU. I propose that the consultations take place in Geneva on a mutually convenient date to be agreed between our Missions.
