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Page: 1/3

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**PAKISTAN – ANTI-DUMPING AND COUNTERVAILING DUTY INVESTIGATIONS  
ON CERTAIN PAPER PRODUCTS FROM INDONESIA**

**REQUEST FOR CONSULTATIONS BY INDONESIA**

The following communication, dated 27 November 2013, from the delegation of Indonesia 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.

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Pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement"), Article 30 of the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement"), and Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"), the Government of Indonesia requests consultations with Pakistan with respect to the continuation of, and failure to terminate in a timely manner, certain anti-dumping and countervailing duty investigations of imports of certain paper products from Indonesia.

On 10 November 2011 and 23 November 2011, respectively, Pakistan initiated an anti-dumping investigation and a countervailing duty investigation of imports of writing/printing paper, *inter alia*, from Indonesia. As of today, two years after their initiation, both investigations are still pending and have not been terminated. Indonesia believes that this failure to terminate is contrary to Article 5.10 of the Anti-Dumping Agreement and Article 11.11 of the SCM Agreement, which require that any anti-dumping or countervailing duty investigation be terminated "in no case" later than 18 months after the date of initiation. As a result of this failure to conclude or terminate the investigations in a timely manner, Pakistan's conduct is also inconsistent with several other provisions of the WTO agreements, as identified further below.

**Background**

On 10 November 2011, Pakistan's National Tariff Commission (the "Commission") initiated an anti-dumping investigation of imports of certain paper products from Indonesia (the "anti-dumping investigation at issue"). On 12 December 2011, the investigation was suspended by the Islamabad High Court. On 24 May 2012, the Islamabad High Court issued a decision declaring that the investigation was inconsistent with Pakistani domestic law. The Islamabad High Court's decision is currently under appeal. As of 10 November 2013 – 24 months after initiation of the investigation – Pakistan has neither issued a final determination nor terminated the investigation.

On 23 November 2011, the Commission initiated a countervailing duty investigation of alleged subsidized imports of certain paper products from Indonesia (the "countervailing duty investigation at issue"). The Peshawar High Court dismissed a petition from certain importers seeking that the investigation be declared illegal. However, on 18 December 2012, the Peshawar High Court granted interim relief suspending the investigation while the Court's determination on the consistency of the investigation with Pakistani domestic law was pending. As of 10 November 2013 – more than 23 months after initiation of the investigation – Pakistan has neither issued a final determination nor terminated the investigation.

**Legal issues**

The Government of Pakistan's continuation of, and failure to terminate in a timely manner, both the anti-dumping and the countervailing duty investigations at issue, despite the expiry of the 18-month time limit stipulated by the Anti-Dumping Agreement and the SCM Agreement, respectively, appear to be inconsistent with the following provisions of WTO law:

- Article X:3(a) of the GATT 1994 because, by virtue of its failure to terminate both investigations at issue within the timeframe provided for in Article 5.10 of the Anti-Dumping Agreement, in Article 11.11 of the SCM Agreement, as well as in Pakistani legislation and regulations incorporating these agreements into Pakistani law<sup>1</sup>, the Government of Pakistan fails to administer its anti-dumping and countervailing laws, regulations, decisions and rulings in a uniform, reasonable, and impartial manner.
- Article 11.11 of the SCM Agreement, because Pakistan has exceeded the requirement specified in that provision that any countervailing duty investigation be completed or terminated "in no case" later than 18 months from the date of initiation.
- Article XI:1 of the GATT 1994, because the "chilling effect" on imports of continuing the anti-dumping and countervailing duty investigations at issue beyond the time limit specified by Articles 5.10 of the Anti-Dumping Agreement and of Article 11.11 of the SCM Agreements, imposes a limiting condition on the importation of the subject products from Indonesia. This amounts to a "prohibition[]" or restriction[]" on importation, within the meaning of and inconsistently with Article XI:1 of the GATT 1994.
- Articles 1 and 18.1 of the Anti-Dumping Agreement, as well as Articles VI:1 and VI:2 of the GATT 1994, because the continuation of the anti-dumping investigation at issue, beyond the 18-month time limit specified in Article 5.10 of the Anti-Dumping Agreement, constitutes additional impermissible "specific action against dumping" within the meaning of Article 18.1 of the Anti-Dumping Agreement.
- Articles 10 and 32.1 of the SCM Agreement, as well as Article VI:3 of the GATT 1994, because the ongoing conduct of the countervailing duty investigation, beyond the 18-month time limit specified in Article 11.11 of the SCM Agreement, constitutes additional impermissible "specific action against a subsidy" within the meaning of Article 32.1 of the SCM Agreement.

In addition, Indonesia considers that Pakistan acts inconsistently with:

- Articles 1 and 18.4 of the Anti-Dumping Agreement, because Pakistan has failed to take all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement. Specifically, Pakistan fails to ensure in its laws, regulations and administrative procedures that all anti-dumping investigations are concluded or terminated no later than 18 months after their initiation, as required by Article 5.10 of the Anti-Dumping Agreement.
- Articles 10 and 32.5 of the SCM Agreement, because Pakistan has failed to take all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the SCM Agreement. Specifically, Pakistan fails to ensure in its laws, regulations and

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<sup>1</sup> Indonesia understands that the relevant Pakistani national laws applicable to anti-dumping investigations are the National Tariff Commission Act of 1990, the Anti-Dumping Duties Ordinance of 2000 and the Anti-Dumping Duties (Amendment) Act of 2011. In particular, Article 29 of the Anti-Dumping Duties Ordinance of 2000 provides that "[t]he Commission shall, except in special circumstances, conclude an investigation within twelve months, and in no case more than eighteen months after its initiation."

Indonesia further understands that the relevant Pakistani national laws applicable to countervailing duty investigations are the National Tariff Commission Act of 1990 and the Countervailing Duties Ordinance of 2001. Article 12.8 of the Countervailing Duties Ordinance of 2001 provides, in relevant part, that "[a]n investigation shall, whenever possible, be concluded within one year and in no event later than eighteen months from its initiation [...]."

administrative procedures that all countervailing investigation are concluded or terminated no later than 18 months after their initiation, as required by Article 11.11 of the SCM Agreement.

- Article 5.10 of the Anti-Dumping Agreement, to the extent that Pakistani law requires the National Tariff Commission to continue, or prevents it from concluding or otherwise terminating, an anti-dumping investigation within the legally-required time limit of 18 months in circumstances where court proceedings related to that investigation have been initiated.
- Article 11.11 of the SCM Agreement, to the extent that Pakistani law requires the National Tariff Commission to continue, or prevents it from concluding or otherwise terminating, a countervailing duty investigation within the legally-required time limit of 18 months in circumstances where court proceedings related to that investigation have been initiated.

For these reasons, Indonesia considers that the actions of the Government of Pakistan cannot be reconciled with Article VI of the GATT 1994, Articles 1, 5.10, 18.1 and 18.4 of the Anti-Dumping Agreement, Articles 10, 11.11 and 32.5 of the SCM Agreement, Article X:1 and X:3(a) of the GATT 1994, as well as the specific provisions cited above, Indonesia reserves the right to raise additional factual issues or legal claims or matters during the course of consultations. In addition to the legal instruments embodying the measures listed above, this request also covers any amendments, extensions, related instruments or practices, the results of any judicial or administrative review proceedings related to the investigations at issue, including, but not limited to, proceedings before the Islamabad and Peshawar High Courts, as well as any measures resulting from these investigations.

Indonesia looks forward to receiving your response to this request. I propose that consultations be held in Geneva, on a date to be agreed between our two missions.

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