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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY INDONESIA

The following communication, dated 12 May 2014, from the delegation of Indonesia to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 27 November 2013, Indonesia requested consultations with Pakistan 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").¹

The request for consultations concerned the initiation and continuation by Pakistan of, and its failure to terminate in a timely manner, certain anti-dumping and countervailing duty investigations of imports of certain paper products from Indonesia (the "measures").

Consultations were held in Geneva on 27 February 2014 with a view to reaching a mutually satisfactory solution. These consultations clarified certain issues pertaining to this matter, but failed to resolve the dispute. Therefore, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of the GATT 1994, Article 17.4 of the Anti-Dumping Agreement and Article 30 of the SCM Agreement, Indonesia requests that the Dispute Settlement Body establish a panel to examine this matter.

A. THE MEASURES AT ISSUE

a. The Anti-Dumping Investigation

The first measure at issue consists of the initiation, continuation and failure to terminate in a timely manner an anti-dumping investigation of imports of certain paper products from Indonesia (the "anti-dumping investigation at issue") that was initiated on 10 November 2011 by Pakistan's National Tariff Commission (the "Commission").²

Indonesia understands that the relevant Pakistani national laws applicable to anti-dumping investigations are the National Tariff Commission Act of 1990³, the Anti-Dumping Duties Ordinance of 2000⁴, the Anti-Dumping Duties (Amendment) Act of 2011⁵, and the Anti-Dumping Duties Rules

¹ Request for Consultations, *Pakistan – Anti-Dumping and Countervailing Duty Investigations on Certain Paper Products from Indonesia*, WT/DS470/1, G/ADP/D99/1, G/SCM/D99/1, G/L/1059, 2 December 2013.

² See "Notice of Initiation of Antidumping Investigation Against Alleged Dumped of Writing Printing Paper into Pakistan Originating in and/or exported from China, Indonesia, Japan and Thailand", ADC No 26/2011/NTC/CP, 10 November 2011. See also, Committee on Anti-Dumping Practices, "Semi-Annual Report of Anti-Dumping Actions for the period 1 July – 31 December 2012 by Pakistan", G/ADP/N/237/PAK, 27 March 2013.

³ *An Act to provide for the establishment of the National Tariff Commission*, (Act No. VI of 1990).

⁴ *Ordinance No. LXV of 2000 to amend and consolidate the law relating to imposition of anti-dumping duties to offset such dumping* (F.No.2(1)/2000-Pub).

of 2001.⁶In 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. "In this case, however, the investigation was not concluded within 18 months.

Instead, 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. This decision was subsequently appealed. To Indonesia's knowledge, a further judgment has been rendered in this matter, but Indonesia has not been officially informed of the content of this judgment.

As far as Indonesia is aware, therefore, more than two years after the initiation of the investigation, the Commission has issued neither a final determination nor a notice terminating the investigation.

b. The Countervailing Duty Investigation

The second measure at issue consists of the initiation, continuation and failure to terminate in a timely manner a countervailing duty investigation of alleged subsidized imports of certain paper products from Indonesia that was initiated by the Commission on 23 November 2011 (the "countervailing duty investigation at issue").⁷

Indonesia understands that the relevant Pakistani national laws applicable to countervailing duty investigations are the National Tariff Commission Act of 1990, the Countervailing Duties Ordinance of 2001⁸ and the Countervailing Duties Rules of 2002.⁹ 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 [...]."In this case, however, the investigation was not concluded within 18 months.

Instead, it was interrupted by court proceedings. The Peshawar High Court dismissed a petition from certain importers seeking that the investigation be declared illegal. On 18 December 2012, however, 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. On 28 January 2014, the Peshawar High Court issued a definitive ruling declaring that the investigation was legal under the law of Pakistan.

As far as Indonesia is aware, therefore, more than two years after the initiation of the investigation, Pakistan has issued neither a final determination nor a notice terminating the countervailing duty investigation at issue.

B. LEGAL BASIS OF THE COMPLAINT

a. The Anti-Dumping Duty Investigation

With respect to the anti-dumping duty investigation, Pakistan's apparent continuation of, and failure to terminate this investigation formally and in a timely manner despite the expiry of the 18-month time limit stipulated by the Anti-Dumping Agreement appears to be inconsistent with the following provisions of WTO law:

⁵ Act No. XXIII of 2011 to amend the Anti-Dumping Duties Ordinance of 2000 (No. F. 22 (29)/2008-Legis).

⁶ Anti-Dumping Duties Rules of 2001 (S.R.O. 203(I)/2001).

⁷ See "Notice of Initiation of an Investigation against Alleged Subsidised Imports of Certain Writing/Printing Paper into Pakistan Originating In and Exported (sic) Indonesia and Thailand", CVD No.2/2011/NTC7CP, 23 November 2011. See also, Committee on Subsidies and Countervailing Measures, "Semi-Annual Report of Countervailing Duty Actions for the period 1 July – 31 December 2013 by Pakistan", G/SCM/N/267/PAK, 4 March 2014.

⁸ Ordinance No. 1 of 2001 to amend and consolidate the law relating to imposition of countervailing duties to offset subsidies (F.No.2(1)/2001-Pub).

⁹ Countervailing Duties Rules of 2002 (S.R.O. 599 (I)/2002).

- Article 5.10 of the Anti-Dumping Agreement, which requires that any anti-dumping duty investigation be terminated "in no case" later than 18 months from the date of initiation.
- Article X:3(a) of the GATT 1994 because, by virtue of its failure to terminate this investigation within the timeframe provided for in Article 5.10 of the Anti-Dumping Agreement as well as in Pakistani legislation and regulations incorporating these agreements into Pakistani law, Pakistan fails to administer its anti-dumping and countervailing laws, regulations, decisions and rulings in a uniform, reasonable and impartial manner.
- Article XI:1 of the GATT 1994, because the "chilling effect" on imports of continuing the anti-dumping investigation at issue beyond the time limit specified by Articles 5.10 of the Anti-Dumping Agreement and of Article 11.11 of the SCM Agreement, 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.

Furthermore, 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, in the application of its laws, regulations and administrative procedures referred to above, Pakistan fails to ensure 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, 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 time limit of 18 months required under both WTO and Pakistani law in circumstances where court proceedings related to that investigation have been initiated.

b. The Countervailing Duty Investigation

With respect to the countervailing duty investigation, Pakistan's continuation of, and failure to terminate, this investigation in a timely manner despite the expiry of the 18-month time limit stipulated by the SCM Agreement, appears to be inconsistent with the following provisions of WTO law:

- Article 11.11 of the SCM Agreement, which requires that any countervailing duty investigation be terminated "in no case" later than 18 months from the date of initiation.
- Article X:3(a) of the GATT 1994 because, by virtue of its failure to terminate this investigation within the timeframe provided for in Article 11.11 of the SCM Agreement, as well as in Pakistani legislation and regulations incorporating these agreements into Pakistani law, Pakistan fails to administer its countervailing laws, regulations, decisions and rulings in a uniform, reasonable and impartial manner.
- Article XI:1 of the GATT 1994, because the "chilling effect" on imports of continuing the countervailing duty investigation at issue beyond the time limit specified by 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 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.

Furthermore, Indonesia considers that Pakistan acts inconsistently with:

- 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, in the application of its laws, regulations and administrative procedures referred to above, Pakistan fails to ensure that all countervailing investigations are concluded or terminated no later than 18 months after their initiation, as required by 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 time limit of 18 months required under both WTO and Pakistani law 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 Articles 10, 11.11 and 32.5 of the SCM Agreement and Articles X:1 and X:3(a) of the GATT 1994. Pakistan's measures also nullify and impair benefits accruing to Indonesia under those agreements.

Accordingly, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of the GATT 1994, Article 17.4 of the Anti-Dumping Agreement and Article 30 of the SCM Agreement, Indonesia requests that the DSB establish a panel to examine this matter. Indonesia further requests that the panel be established with the standard terms of reference, as set forth in Article 7.1 of the DSU.

Indonesia asks that this request be placed on the agenda of the DSB meeting to be held on 23 May 2014.
