

**EUROPEAN COMMUNITIES – EXPIRY REVIEWS OF ANTI-DUMPING AND
COUNTERVAILING DUTIES IMPOSED ON IMPORTS OF PET FROM INDIA**

Request for Consultations by India

The following communication, dated 4 December 2008, from the delegation of India to the delegation of the European Communities and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

1. The Government of India hereby requests consultations with the European Communities (the "EC") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "AD Agreement") and Article 30 of the *Agreement on Subsidies and Countervailing Duties* (the "SCM Agreement") with respect to, but not limited to, the following measures of the EC:

- (a) Article 11(2) of Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ (the "Basic AD Regulation") read together with Regulation (EEC, EURATOM) no. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits² ("Regulation 1182/71");
- (b) Article 18(1) of Council Regulation (EC) No. 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community³ (the "Basic CVD Regulation") read together with Regulation 1182/71;
- (c) Council Regulation (EC) No. 192/2007 of 22 February 2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate ("PET") originating in India following an expiry review⁴ (the "AD Measure"); and
- (d) Council Regulation (EC) No. 193/2007 of 22 February 2007 imposing a definitive countervailing duty on imports of PET originating in India following an expiry review⁵ (the "CVD Measure").⁶

¹ Official Journal of the European Communities, L56, pp. 1-20, published on 6 March 1996.

² Official Journal of the European Communities, L124, pp. 1-2, published on 8 June 1971.

³ Official Journal of the European Communities, L288, pp. 1-33, published on 21 October 1997.

⁴ Official Journal of the European Communities, L59, pp. 1-33, published on 27 February 2007.

⁵ Official Journal of the European Communities, L59, pp. 34-59, published on 27 February 2007.

2. The Government of India considers that (a) Article 11(2) of the Basic AD Regulation read together with Regulation 1182/71 and (b) Article 18(1) of the Basic CVD Regulation read together with Regulation 1182/71, are inconsistent as such with the EC's obligations under Article 11.3 of the AD Agreement and Article 21.3 of the SCM Agreement, respectively, to the extent that these provisions of the EC's regulations do not require the termination of definitive anti-dumping or countervailing duties, as the case may be, on a date not later than five years from the imposition of such duties and permit the initiation of an expiry review on or after that date. These provisions of the EC's regulations are also inconsistent as such with the EC's obligations under Article 18.4 of the AD Agreement, Article 32.5 of the SCM Agreement and Article XVI: 4 of the Marrakesh Agreement Establishing the World Trade Organization.

3. Further, the Government of India considers that the AD Measure is inconsistent with the EC's obligations under Article VI of the GATT 1994, Articles 11.1, 11.3, 11.4, 11.5, 6.1, 6.2, 6.5, 6.6, 6.8 and Annex II of the AD Agreement and that the CVD Measure is inconsistent with the EC's obligations under Articles 21.3, 21.4, 12.1, 12.4, 12.5 and 12.7 of the SCM Agreement. In particular:

- (i) The European Commission (the "Commission") initiated the expiry reviews in the case of the AD Measure and the CVD Measure inconsistently with the provisions of Article 11.3 of the AD Agreement and Article 21.3 of the SCM Agreement, respectively, because the Commission could not have done so (a) on the basis of requests that were not duly substantiated and (b) on or after the date on which the definitive duties should have been terminated, that is to say, on or after the date not later than five years from the date of the imposition of the definitive duties.
- (ii) The Commission determined that the expiry of the definitive duties would be likely to lead to continuation or recurrence of (a) dumping and injury and (b) subsidization and injury, inconsistently with the provisions of Article 11.3 of the AD Agreement and Article 21.3 of the SCM Agreement, respectively, insofar as:
 - (a) The Commission misapplied the relevant legal standards;
 - (b) The conclusions on which the Commission based the above determinations are not reasoned and adequate;
 - (c) The above determinations of the Commission are not based on positive evidence and an objective examination of the factual basis, which is provided for also in Article 3.1 of the AD Agreement and Article 15.2 of the SCM Agreement; and
 - (d) In the case of the AD Measure, the factual basis for cumulation of imports of PET was not sufficient.

⁶ The Government of India clarifies that the following are also included within the scope of the measures at issue: (i) Price undertakings by exporter-producers from India given or extended pursuant to the AD Measure; (ii) *Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in India, Indonesia, the Republic of Korea, Malaysia, Taiwan and Thailand and a partial interim review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in the Republic of Korea and Taiwan*, dated 1 December 2005, published in the Official Journal of the European Communities on 1 December 2005 (C304, pp. 9-13), and (iii) *Notice of Initiation of an expiry review of countervailing measures applicable to imports of certain polyethylene terephthalate originating in, inter alia, India*, dated 1 December 2005, published in the Official Journal of the European Communities on 1 December 2005 (C304, pp. 4-8).

- (iii) The Commission did not comply fully with the requirements of the provisions of Article 6.5 (including Articles 6.5.1 and 6.5.2) of the AD Agreement and of Article 12.4 (including Articles 12.4.1 and 12.4.2) of the SCM Agreement relating to confidential information.
 - (iv) The Commission acted inconsistently with the provisions of Articles 11.4, 6.1 and 6.2 of the AD Agreement in the case of the AD Measure and Articles 21.4 and 12.1 of the SCM Agreement in the case of the CVD Measure by failing to give interested parties sufficient opportunity to submit information and defend their interests in the expiry reviews.
 - (v) The Commission acted inconsistently with the provisions of Articles 11.4, 6.6, 6.8 and paragraph 3 of Annex II of the AD Agreement in the case of the AD Measure and Articles 21.4, 12.5 and 12.7 of the SCM Agreement in the case of the CVD Measure by failing to take into account vital information and evidence submitted by interested parties in reaching its conclusions.
4. The Government of India reserves its right to raise additional factual claims and legal matters during the course of the consultations.
5. We look forward to receiving your reply to the present request and to fixing a mutually convenient date and venue for consultations.
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