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**EUROPEAN UNION – COUNTERVAILING MEASURES ON CERTAIN
POLYETHYLENE TEREPHTHALATE FROM PAKISTAN**

REQUEST FOR CONSULTATIONS BY PAKISTAN

The following communication, dated 28 October 2014, and received at the WTO on 5 November 2014, from the delegation of Pakistan to the delegation of the European Union and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Government of Pakistan requests consultations with the European Union (EU) with respect to the imposition of provisional and definitive countervailing measures by the EU on imports of certain polyethylene terephthalate from Pakistan, and with respect to certain aspects of the investigation underlying those measures.¹

Pakistan is particularly concerned about the following aspects of the measures at issue:

1. The EU determined that Pakistan's Final Tax Regime (FTR), which is part of Pakistan's tax law, constitutes a countervailable subsidy that is contingent upon export performance. In Pakistan's view, this determination appears to be inconsistent with Articles 1, 3, and 19 of the SCM Agreement, as well as Article VI of the GATT 1994. In particular:
 - (i) the EU appears to have acted inconsistently with Articles 1.1(a)(1)(ii) and 3.1(a) of the SCM Agreement and Article VI of the GATT 1994 in determining that the FTR resulted in the foregoing of government revenue. The EU appears to have compared the tax treatment under the FTR to a hypothetical treatment under the "normal tax regime" (NTR), and improperly concluded that any difference in tax liability between these two regimes constituted government revenue foregone; and,
 - (ii) the EU appears to have acted inconsistently with Articles 1.1(a)(1)(ii), 3.1(a) and 19.3 of the SCM Agreement and Article VI of the GATT 1994 by refusing to offset any alleged export subsidy with the Export Development Surcharge (EDS) paid by the Pakistani exporter.
2. The EU also determined that the Manufacturing Bond Scheme (MBS) is a countervailable subsidy that is contingent upon export performance. This

¹ The Provisional Determination was published as Commission Regulation (EU) No 473/2010 of 31 May 2010, *Imposing a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates*, OJ L134/25. The Definitive Determination was published as Council Implementing Regulation (EU) 857/2010 of 27 September 2010, *Imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates*, OJ L254/10.

determination appears to be inconsistent with Articles 1 and 3, and Annexes I, II, and III of the SCM Agreement, as well as Article VI of the GATT 1994. In particular:

- (i) the EU appears to have acted inconsistently with Articles 1.1(a)(1)(i), 1.1(a)(1)(ii), and 3.1(a), on their own and read together with Annexes I(h), I(i), II(I)(2), II(II)(1), II(II)(2), III(II)(2), and III(II)(3) of the SCM Agreement, as well as Article VI of the GATT 1994, by determining that the MBS constituted a remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product; and,
 - (ii) the EU appears to have acted inconsistently with Articles 1.1(a)(1)(i), 1.1(a)(1)(ii), and 3.1(a), on their own and read together with Annexes I(h), I(i), II(I)(2), II(II)(2), III(I), and III(II)(3) of the SCM Agreement, as well as Article VI of the GATT 1994, by determining that the entirety of the duty refunds under the MBS scheme – rather than just the excess portion of these refunds – constituted an export subsidy.
- 3. The EU determined that the "Long-Term Financing of Export-Orientated Projects" (LTF-EOP) programme constituted a countervailable subsidy that is contingent upon export performance and included this subsidy in its calculation of the subsidization margin. This determination appears to be inconsistent with Articles 1, 3, 14, and 19 of the SCM Agreement as well as Article VI of the GATT 1994. In particular:
 - (i) the EU appears to have acted inconsistently with Articles 1.1(a)(1)(i), 1.1(a)(1)(iv), 3.1(a), 14(b), and 19.3 of the SCM Agreement, as well as Article VI of the GATT 1994, by failing to explain adequately the application of its method to the case at hand and by choosing an inappropriate interest benchmark for calculating the amount of subsidy during the investigation period; and,
 - (ii) the EU appears to have acted inconsistently with Articles 1.1(b), 3.1(a), 14(b), and 19.3 of the SCM Agreement, as well as Article VI of the GATT 1994, in its allocation of the amount of the subsidy.
- 4. The EU determined that the "Imports of Plant, Machinery and Equipment in Manufacturing Bond" (IPME-MB) programme constituted a countervailable subsidy that is contingent upon export performance and included this subsidy in its calculation of the subsidization margin. This determination appears to be inconsistent with Articles 1, 3, 14, and 19 of the SCM Agreement, as well as Article VI of the GATT 1994. In particular:
 - (i) the EU appears to have acted inconsistently with Articles 1.1(a)(1)(i), 1.1(a)(1)(iv), 3.1(a), 14(b), and 19.3 of the SCM Agreement, as well as Article VI of the GATT 1994, by failing to explain adequately the application of its method to the case at hand and by choosing an inappropriate interest benchmark for calculating the amount of subsidy during the investigation period; and,
 - (ii) the EU appears to have acted inconsistently with Articles 1.1(b), 3.1(a), 14(b), and 19.3 of the SCM Agreement, as well as Article VI of the GATT 1994, in its allocation of the amount of the subsidy.
- 5. The EU determined that a causal link existed between the allegedly subsidized imports and the material injury suffered by the domestic industry. In so doing, the EU appears to have acted inconsistently with Article 15.5 of the SCM Agreement by failing to ensure that injurious effects of known factors, such as imports from other sources, competition from domestic producers not included in the domestic industry, economic downturn, and low oil prices, were not improperly attributed to the allegedly subsidized imports.

6. The EU appears to have acted inconsistently with Articles 12.6 and 12.8 of the SCM Agreement by failing to provide the Pakistani exporter with the results of the EU's verification visits to that exporter and by failing to inform all interested parties of the essential facts under consideration. Moreover, during the verification visits, the EU appears to have acted inconsistently with Article 12.6 and Annex VI(1)-(8) of the SCM Agreement by failing to make a thorough and objective assessment of the matter, including a proper establishment of the facts.
7. The EU appears to have acted inconsistently with Articles 22.3 and 22.4 of the SCM Agreement by failing to provide in sufficient detail the findings, explanations, and conclusions reached with respect to the existence of the subsidies allegedly arising under the FTR, MBS, LTF-EOP, and IPME-MB programmes.

It appears to Pakistan that the foregoing aspects of the EU's determinations may not be reconciled with Articles 10, 19.1, and 32 of the SCM Agreement, and the specific provisions cited above.

In addition to the legal instruments listed above, these consultations are also requested with respect to any amendments, extensions, related instruments or practices, the results of any review proceedings, and any modifications of the original measures as a result of any proceedings under EU law, including proceedings before the European Court of Justice. Pakistan reserves the right to raise additional legal claims or matters during the course of consultations.

Pakistan looks forward to receiving your response to this request. I propose that the date and venue of the consultations be agreed between our two missions.
