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PAKISTAN — ANTI-DUMPING MEASURES ON BIAXIALLY ORIENTED POLYPROPYLENE FILM FROM THE UNITED ARAB EMIRATES

REPORT OF THE PANEL

Addendum

BCI deleted, as indicated [[***]]

This *addendum* contains Annexes A to C to the Report of the Panel to be found in document WT/DS538/R.

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ANNEX A-1

WORKING PROCEDURES OF THE PANEL

Adopted on 25 September 2019

General

1. (1) In this proceeding, the Panel shall follow the relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). In addition, the following Working Procedures apply.

(2) The Panel reserves the right to modify these procedures as necessary, after consultation with the parties.

Confidentiality

2. (1) The deliberations of the Panel and the documents submitted to it shall be kept confidential. Members shall treat as confidential information that is submitted to the Panel which the submitting Member has designated as confidential.

(2) In accordance with the DSU, nothing in these Working Procedures shall preclude a party or third party from disclosing statements of its own positions to the public.

(3) If a party submits a confidential version of its written submissions to the Panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

(4) The Additional Working Procedures of the Panel Concerning Business Confidential Information set out in the Annex are an integral part of these Working Procedures.

Submissions

3. (1) Before the first substantive meeting of the Panel with the parties, each party shall submit a written submission in which it presents the facts of the case and its arguments, in accordance with the timetable adopted by the Panel.

(2) Each party shall also submit to the Panel, before the second substantive meeting of the Panel, a written rebuttal, in accordance with the timetable adopted by the Panel.

(3) Each third party that chooses to make a written submission before the first substantive meeting of the Panel with the parties shall do so in accordance with the timetable adopted by the Panel.

(4) The Panel may invite the parties or third parties to make additional submissions during the proceeding, including with respect to requests for preliminary rulings in accordance with paragraph 4 below.

Preliminary rulings

4. (1) If Pakistan considers that the Panel should make a ruling before the issuance of the Report that certain measures or claims in the panel request or the complainant's first written submission are not properly before the Panel, the following procedure applies. Exceptions to this procedure shall be granted upon a showing of good cause.

a. Pakistan shall submit any such request for a preliminary ruling at the earliest possible opportunity and in any event no later than in its first written submission to the Panel. The United Arab Emirates shall submit its response to the request before the

first substantive meeting of the Panel, at a time to be determined by the Panel in light of the request.

b. The Panel may issue a preliminary ruling on the issues raised in such a preliminary ruling request before, during or after the first substantive meeting, or the Panel may defer a ruling on the issues raised by a preliminary ruling request until it issues its Report to the parties.

c. If the Panel finds it appropriate to issue a preliminary ruling before the issuance of its Report, the Panel may provide reasons for the ruling at the time that the ruling is made, or subsequently in its Report.

d. Any request for such a preliminary ruling by the respondent before the first meeting, and any subsequent submissions of the parties in relation thereto before the first meeting, shall be served on all third parties. The Panel may provide all third parties with an opportunity to provide comments on any such request, either in their submissions as provided for in the timetable or separately. Any preliminary ruling issued by the Panel before the first substantive meeting on whether certain measures or claims are properly before the Panel shall be shared with all third parties.

(2) This procedure is without prejudice to the parties' right to request other types of preliminary or procedural rulings during the proceeding, and to the procedures that the Panel may follow with respect to such requests.

Evidence

5. (1) Each party shall submit all evidence to the Panel no later than during the first substantive meeting, except evidence necessary for purposes of rebuttal, or evidence necessary for answers to questions or comments on answers provided by the other party. Additional exceptions may be granted upon a showing of good cause.

(2) If any new evidence has been admitted upon a showing of good cause, the Panel shall accord the other party an appropriate period of time to comment on the new evidence submitted.

6. (1) If the original language of an exhibit or portion thereof is not a WTO working language, the submitting party or third party shall simultaneously submit a translation of the exhibit or relevant portion into the WTO working language of the submission. The Panel may grant reasonable extensions of time for the translation of exhibits upon a showing of good cause.

(2) Any objection as to the accuracy of a translation should be raised promptly in writing, preferably no later than the next submission or meeting (whichever occurs earlier) following the submission which contains the translation in question. Any objection shall be accompanied by an explanation of the grounds for the objection and an alternative translation.

7. (1) To facilitate the maintenance of the record of the dispute and maximize the clarity of submissions, each party and third party shall sequentially number its exhibits throughout the course of the dispute, indicating the submitting Member and the number of each exhibit on its cover page. Exhibits submitted by the United Arab Emirates should be numbered ARE-1, ARE-2, etc. Exhibits submitted by Pakistan should be numbered PAK-1, PAK-2, etc. If the last exhibit in connection with the first submission was numbered ARE-5, the first exhibit in connection with the next submission thus would be numbered ARE-6.

(2) Each party shall provide an updated list of exhibits (in Word or Excel format) together with each of its submissions, oral statements, and responses to questions.

(3) If a party submits a document that has already been submitted as an exhibit by the other party, it should explain why it is submitting that document again.

(4) If a party includes a hyperlink to the content of a website in a submission, and intends that the cited content form part of the official record, the cited content of the website shall be

provided in the form of an exhibit, with a statement of the date at which that content was obtained from the website.

Editorial Guide

8. In order to facilitate the work of the Panel, each party and third party is invited to make its submissions in accordance with the WTO Editorial Guide for Panel Submissions (electronic copy provided).

Questions

9. The Panel may pose questions to the parties and third parties at any time, including:

a. Before any meeting, the Panel may send written questions, or a list of topics it intends to pursue in questioning orally during a meeting. The Panel may ask different or additional questions at the meeting.

b. The Panel may put questions to the parties and third parties orally during a meeting, and in writing following the meeting, as provided for in paragraphs 15 and 21 below.

Substantive meetings

10. The Panel shall meet in closed session.

11. The parties shall be present at the meetings only when invited by the Panel to appear before it.

12. (1) Each party has the right to determine the composition of its own delegation when meeting with the Panel.

(2) Each party shall have the responsibility for all members of its delegation and shall ensure that each member of its delegation acts in accordance with the DSU and these Working Procedures, particularly with regard to the confidentiality of the proceeding and the submissions of the parties and third parties.

13. Each party shall provide to the Panel the list of members of its delegation no later than 5.00 p.m. (Geneva time) three working days before the first day of each meeting with the Panel.

14. A request for interpretation by any party should be made to the Panel as early as possible, preferably at the organizational stage, to allow sufficient time to ensure availability of interpreters.

15. The first substantive meeting of the Panel with the parties shall be conducted as follows:

a. The Panel shall invite the United Arab Emirates to make an opening statement to present its case first. Subsequently, the Panel shall invite Pakistan to present its point of view. Before each party takes the floor, it shall provide the Panel and other participants at the meeting with a provisional written version of its statement. If interpretation is needed, each party shall provide additional copies for the interpreters before taking the floor.

b. Each party should avoid lengthy repetition of the arguments in its submissions. Each party is invited to limit the duration of its opening statement to not more than 75 minutes. If either party considers that it requires more time for its opening statement, it should inform the Panel and the other party at least 10 days before the meeting, together with an estimate of the expected duration of its statement. The Panel will accord equal time to the other party.

c. After the conclusion of the opening statements, the Panel shall give each party the opportunity to make comments or ask the other party questions.

d. The Panel may subsequently pose questions to the parties.

e. Once the questioning has concluded, the Panel shall afford each party an opportunity to present a brief closing statement, with the United Arab Emirates presenting its statement first. Before each party takes the floor, it shall provide the Panel and other participants at the meeting with a provisional written version of its closing statement, if available.

f. Following the meeting:

i. Each party shall submit a final written version of its opening statement no later than 5.00 p.m. (Geneva time) on the first working day following the meeting. At the same time, each party should also submit a final written version of any prepared closing statement that it delivered at the meeting.

ii. Each party shall send in writing, within the timeframe established by the Panel before the end of the meeting, any questions to the other party to which it wishes to receive a response in writing.

iii. The Panel shall send in writing, within the timeframe established by the Panel before the end of the meeting, any questions to the parties to which it wishes to receive a response in writing.

iv. Each party shall respond in writing to the questions from the Panel, and to any questions posed by the other party, within the time-frame established by the Panel before the end of the meeting.

16. The second substantive meeting of the Panel with the parties shall be conducted in the same manner as the first substantive meeting with the Panel, except that Pakistan shall be given the opportunity to present its oral statement first. If Pakistan chooses not to avail itself of that right, it shall inform the Panel and the other party no later than 5.00 p.m. (Geneva time) three working days before the meeting. In that case, the United Arab Emirates shall present its opening statement first, followed by Pakistan. The party that presented its opening statement first shall present its closing statement first.

Third party session

17. Each third party may present its views orally during a session of the first substantive meeting with the parties set aside for that purpose.

18. Each third party shall indicate to the Panel whether it intends to make an oral statement during the third-party session, along with the list of members of its delegation, in advance of this session and no later than 5.00 p.m. (Geneva time) three working days before the third-party session of the meeting with the Panel.

19. (1) Each third party has the right to determine the composition of its own delegation when meeting with the Panel.

(2) Each third party shall have the responsibility for all members of its delegation and shall ensure that each member of its delegation acts in accordance with the DSU and these Working Procedures, particularly with regard to the confidentiality of the proceeding and the submissions of the parties and third parties.

20. A request for interpretation by any third party should be made to the Panel as early as possible, preferably upon receiving the working procedures and timetable for the proceeding, to allow sufficient time to ensure availability of interpreters.

21. The third-party session shall be conducted as follows:

a. All parties and third parties may be present during the entirety of this session.

b. The Panel shall first hear the oral statements of the third parties, who shall speak in alphabetical order. Each third party making an oral statement at the third-party session shall provide the Panel and other participants with a provisional written version of its

statement before it takes the floor. If interpretation of a third party's oral statement is needed, that third party shall provide additional copies for the interpreters before taking the floor.

c. Each third party should limit the duration of its statement to 15 minutes, and avoid repetition of the arguments already in its submission. If a third party considers that it requires more time for its opening statement, it should inform the Panel and the parties at least 10 days before the meeting, together with an estimate of the expected duration of its statement. The Panel will accord equal time to all third parties for their statements.

d. After the third parties have made their statements, the parties shall be given the opportunity to pose questions to any third party for clarification on any matter raised in that third party's submission or statement.

e. The Panel may subsequently pose questions to any third party.

f. Following the third-party session:

   i. Each third party shall submit the final written version of its oral statement, no later than 5.00 p.m. (Geneva time) on the first working day following the meeting.

   ii. Each party may send in writing, within the timeframe to be established by the Panel before the end of the meeting, any questions to one or more third parties to which it wishes to receive a response in writing.

   iii. The Panel may send in writing, within the timeframe to be established by the Panel before the end of the meeting, any questions to one or more third parties to which it wishes to receive a response in writing.

   iv. Each third party choosing to do so shall respond in writing to written questions from the Panel or a party, within a timeframe established by the Panel before the end of the meeting.

Descriptive part and executive summaries

22. The description of the arguments of the parties and third parties in the descriptive part of the Panel report shall consist of executive summaries provided by the parties and third parties, which shall be annexed as addenda to the report. These executive summaries shall not in any way serve as a substitute for the submissions of the parties and third parties in the Panel's examination of the case.

23. Each party shall submit an integrated executive summary. This integrated executive summary shall summarize the facts and arguments as presented to the Panel in the party's written submissions and oral statements. The integrated executive summary may also include a summary of the party's responses to questions following the substantive meetings. The timing of the submission of the integrated executive summary shall be indicated in the timetable adopted by the Panel.

24. Each party's integrated executive summary shall be limited to no more than 20 pages.

25. The Panel may request the parties and third parties to provide executive summaries of facts and arguments presented in any other submissions to the Panel for which a deadline may not be specified in the timetable.

26. Each third party shall submit an integrated executive summary of its arguments as presented in its written submission and statement in accordance with the timetable adopted by the Panel. This integrated executive summary may also include a summary of responses to questions. The executive summary to be provided by each third party shall not exceed six pages. If a third-party submission and/or oral statement does not exceed six pages in total, this may serve as the executive summary of that third party's arguments.

Interim review

27. Following issuance of the interim report, each party may submit a written request to review precise aspects of the interim report and request a further meeting with the Panel, in accordance with the timetable adopted by the Panel. The right to request such a meeting shall be exercised no later than at the time the written request for review is submitted.

28. If no further meeting with the Panel is requested, each party may submit written comments on the other party's written request for review, in accordance with the timetable adopted by the Panel. Such comments shall be limited to commenting on the other party's written request for review.

Interim and final report

29. The interim report, as well as the final report before its official circulation, shall be kept strictly confidential and shall not be disclosed.

Service of documents

30. The following procedures regarding service of documents apply to all documents submitted by parties and third parties during the proceeding:

a. Each party and third party shall submit all documents to the Panel by submitting them with the DS Registry (office No. 2047).

b. Each party and third party shall submit a paper copy of its submissions and exhibits to the Panel by 5.00 p.m. (Geneva time) on the due dates established by the Panel. The DS Registrar shall stamp the documents with the date and time of submission. The paper version submitted to the DS Registry shall constitute the official version for the purposes of submission deadlines and the record of the dispute. If any documents are in a format that is impractical to submit as a paper copy, then the party may submit such documents to the DS Registrar by email or on a CD-ROM, DVD or USB key only.

c. Each party and third party shall also send an email to the DS Registry, at the same time that it submits the paper versions, attaching an electronic copy of all documents that it submits to the Panel, preferably in both Microsoft Word and PDF format. All such emails to the Panel shall be addressed to DSRegistry@wto.org, and copied to other WTO Secretariat staff whose email addresses have been provided to the parties during the proceeding. If it is not possible to attach all the exhibits to one email, the submitting party or third party shall provide the DS Registry with four copies of the exhibits on USB keys, CD-ROMs or DVDs.

e. Each party shall serve any document submitted to the Panel directly on the other party. Each party shall, in addition, serve any submissions in advance of the first substantive meeting with the Panel directly on the third parties. Each third party shall serve any document submitted to the Panel directly on the parties and on all other third parties. A party or third party may serve its documents on another party or third party by email or other electronic format acceptable to the recipient without having to serve a paper copy, unless the recipient party or third party has requested a paper copy at least five working days before their filing. Each party and third party shall confirm, in writing, that copies have been served on the parties and third parties, as appropriate, at the time it provides each document to the Panel.

f. Each party and third party shall submit its documents with the DS Registry and serve copies on the other party (and third parties if appropriate) by 5.00 p.m. (Geneva time) on the due dates established by the Panel.

g. As a general rule, all communications from the Panel to the parties and third parties will be via email. In addition to transmitting them to the parties by email, the Panel shall provide the parties with a paper copy of the interim report and the final report.

Correction of clerical errors in submissions

31. The Panel may grant leave to a party or third party to correct clerical errors in any of its submissions (including paragraph numbering and typographical mistakes). Any such request should identify the nature of the errors to be corrected, and should be made promptly following the filing of the submission in question.

ANNEX A-2

ADDITIONAL WORKING PROCEDURES OF THE PANEL ON BUSINESS CONFIDENTIAL INFORMATION

1. The following procedures apply to business confidential information (BCI) submitted in the course of the present Panel proceedings.

2. For the purposes of these Panel proceedings, BCI is any information that was previously treated by the National Tariff Commission of Pakistan as confidential in the course of the specific anti-dumping proceedings at issue in this dispute, including original and sunset proceedings. These procedures do not apply, however, to any information that is available in the public domain, nor any BCI that the entity providing such information agrees in writing to make the information publicly available.

3. No person may have access to BCI except a member of the Secretariat or the Panel, an employee of a party or third party, or an outside advisor to a party or third party for the purposes of this dispute. However, an outside advisor to a party or third party is not permitted access to BCI if that advisor is an officer or employee of an enterprise engaged in the production, sale, export, or import of the products that were the subject of the investigation at issue in this dispute, or an officer or employee of an association of such enterprises.

4. A person having access to BCI shall treat it as confidential, i.e. shall not disclose that information other than to persons authorized to have access to it pursuant to these procedures. Each party and third party is responsible for ensuring that its employees and outside advisors comply with these procedures. BCI obtained under these procedures may be used only for the purpose of providing information and argumentation in this dispute and for no other purpose. All documents and electronic storage media containing BCI shall be stored in such a manner as to prevent unauthorized access to such information. Third parties' access to BCI shall be subject to the terms of these procedures.

5. A party submitting BCI shall mark the cover and/or first page of the document containing BCI to indicate the presence of such information. The first page or cover of the document shall state "Contains Business Confidential Information on pages xxxxxx". The specific information in question shall be placed between double brackets, as follows: [[xx,xxx.xx]]. A party submitting BCI in the form of, or as part of, an Exhibit shall, in addition to the above, so indicate by putting "BCI" next to the exhibit number (e.g. Exhibit ARE-1 (BCI), Exhibit PAK-1 (BCI)).

6. Where BCI is submitted in electronic format, the file name shall include the terms "Business Confidential Information" or "BCI". In addition, where applicable, the label of the storage medium shall be clearly marked with the statement "Business Confidential Information" or "BCI".

7. Where a party submits a document containing BCI to the Panel, the other party or third party referring to that BCI in its documents, including written submissions and oral statements, shall clearly identify all such information in those documents. All such documents shall be marked and treated as described in paragraph 5. In the case of an oral statement containing BCI, the party or third party making such a statement shall inform the Panel before making it that the statement will contain BCI, and the Panel will ensure that only persons authorized to have access to BCI pursuant to these procedures are present or observing the session at that time. The written versions of such oral statements submitted to the Panel shall be marked as provided for in paragraph 5.

8. If a party or third party considers that information submitted by the other party or a third party should have been designated as BCI and objects to its submission without such designation, it shall forthwith bring this objection to the attention of the Panel and the other party, and, where relevant, the third parties, together with the reasons for the objection. Similarly, if a party or third party considers that the other party or a third party designated as BCI information which should not be so designated, it shall forthwith bring this objection to the attention of the Panel and the other party, and, where relevant, the third parties, together with the reasons for the objection. The Panel shall

decide whether information subject to an objection will be treated as BCI for the purposes of these proceedings on the basis of the criteria set out in paragraph 2.

9. The Panel will not disclose BCI in its report, or in any other way, to persons not authorized under these procedures to have access to BCI. The Panel may make statements of conclusion drawn from such information. Before the Panel circulates its final report to the Members, the Panel will give each party an opportunity to review the report to ensure that it does not contain any BCI.

10. Submissions, exhibits, and other documents or recordings containing BCI will be included in the record forwarded to the Appellate Body in the event of an appeal of the Report of the Panel.

ANNEX A-3

PANEL COMMUNICATION TO THE PARTIES (14 APRIL 2020)

As a result of the extraordinary circumstances related to COVID-19, the Director-General of the WTO has directed Secretariat staff to work from home until the end of April 2020 and has also suspended all meetings at the WTO premises until then. At present, the second substantive meeting with the parties, scheduled for 12-13 May, has not been cancelled or postponed. However, given the uncertainties surrounding the duration of the restrictive measures taken by the WTO, Switzerland and other countries in response to COVID-19, it seems increasingly likely that it will not be possible to hold the second substantive meeting at the WTO as scheduled.

With this in mind, in the current exceptional circumstances, the Panel would like to seek the parties' views on the possibility of hearing the parties through a written procedure, comprising statements from both parties and questions and answers, along the lines set out in the attached proposed amendments to the current Working Procedures. As set out in the attached document, given the unusual nature of such an arrangement, the Panel also proposes to reserve its right to convene a meeting with the parties at a later date, should the Panel consider it necessary to effectively discharge its mandate.

The Panel asks both parties to provide comments on this proposal by 5 p.m. Geneva time on Friday, 17 April 2020.

ANNEX A-4

PANEL COMMUNICATION TO THE PARTIES (23 APRIL 2020)

The Panel is in receipt of the parties' comments of 17 April 2020 on the Panel's communication of 14 April 2020 regarding alternative arrangements for the second substantive meeting. In light of the views expressed by the parties, the Panel has decided to reassess the situation in mid-May and announce a decision to the parties on 20 May 2020. Therefore, the second substantive meeting with the parties will not take place on 12-13 May 2020, as originally envisioned in the timetable for these panel proceedings.

Should the Panel decide, on 20 May, that it is necessary to hear the parties through a written procedure including written statements and written questions, the Panel plans to schedule the submission of the written opening statements, and the issuance of written questions to the parties, for the week of 2 June 2020.

In closing, the Panel recalls that pursuant to paragraph 9 of the Working Procedures, the Panel may, at any time, pose questions to the parties. Depending on how the situation evolves, the Panel might wish to pose questions in accordance with paragraph 9 of the Working Procedures also outside the framework of the second substantive meeting or of the alternative arrangements that might replace it.

ANNEX A-5

PANEL COMMUNICATION TO THE PARTIES (20 MAY 2020)

The Panel refers to its communication of 14 April 2020, to the parties' comments of 17 April 2020, and to the Panel's consequent communication of 23 April 2020, regarding arrangements for the second substantive meeting amidst the COVID-19 pandemic. In light of the views expressed by the parties, on 23 April 2020 the Panel committed to reassessing the situation in mid-May and announcing a decision to the parties today, 20 May 2020.

Unfortunately, despite a partial relaxation of measures in Switzerland, significant restrictions remain in place elsewhere, affecting in particular international travel, and do not make it possible for the Panel to plan an in-person second substantive meeting in the near term. Moreover, the Panel is concerned about the considerable uncertainty surrounding the time at which relevant restrictions may be lifted, which raises the risk of considerable further delays before an in-person meeting could be held.

In these circumstances, the Panel has decided to hear the parties through a written procedure, as set out in the attached amendments to the Working Procedures. These amendments take into account the parties' comments of 17 April 2020 as regards page limits and a longer timeframe for the parties' comments on each other's written statements. Given the unusual nature of such an arrangement, the Panel also reserves its right to convene a meeting with the parties at a later date, should the Panel consider it necessary to effectively discharge its mandate.

ANNEX A-6

ARRANGEMENTS RELATING TO THE SECOND SUBSTANTIVE MEETING
IN LIGHT OF THE COVID-19 PANDEMIC

Adopted on 20 May 2020

In view of the extraordinary circumstances of the COVID-19 pandemic, a written procedure will replace the second substantive meeting of the Panel with the parties, in derogation from the Working Procedures of the Panel and in particular paragraph 16 thereof.

The written procedure shall be conducted as follows:

a. Each party shall submit a written opening statement, not exceeding twenty-five pages (single-spaced print, minimum font size Verdana 9), by 10.00 a.m. (Geneva time) on Tuesday 9 June 2020.

b. Each party shall submit comments on the other party's opening statement, not exceeding fifteen pages (single-spaced print, minimum font size Verdana 9), by 10.00 a.m. (Geneva time) on Tuesday 16 June 2020.

c. The Panel shall send its questions to the parties by 5.00 p.m. (Geneva time) on Friday 19 June 2020.

d. Each party shall send its questions to the other party by 5.00 p.m. (Geneva time) on Friday 19 June 2020.

e. Each party shall respond in writing to the questions from the Panel, and to any questions posed by the other party, by 5.00 p.m. (Geneva time) on Friday 3 July 2020.

f. Each party shall submit in writing any comments that it may have on the other party's responses to the questions from the Panel, by 5.00 p.m. (Geneva time) on Friday 17 July 2020.

g. Each party shall submit a closing statement not exceeding three pages (single-spaced print, minimum font size Verdana 9), by 5.00 p.m. (Geneva time) on Friday 17 July 2020.

Should it consider it necessary, the Panel may, after consultation with the parties, decide to hold a further substantive meeting with the parties after completion of this written procedure.

All references in the Working Procedures of the Panel to the "second substantive meeting of the Panel" shall be read in light of this communication.

ANNEX A-7

PANEL COMMUNICATION TO THE PARTIES (21 JULY 2020)

The Panel refers to its communication of 20 May 2020, informing the parties of its decision to hear them through a written procedure in lieu of the second substantive meeting. In that communication, the Panel indicated that given the unusual nature of the arrangement, it reserved the possibility subsequently to convene an in-person meeting with the parties, should it consider it necessary to effectively discharge its mandate.

The written procedure in lieu of the second substantive meeting is now complete, with the submission on Friday 17 July 2020 of the parties' comments on each other's responses, and of one closing statement. The Panel thanks the parties for their cooperation in that written procedure, and has concluded that convening an additional in-person meeting is not necessary.

The Panel therefore conveys herewith the timetable for the remainder of the Panel proceedings, which it has set in light of the number and complexity of the issues raised.

The Panel also refers to its decision, communicated to the parties by email of 17 March 2020, to suspend the requirement to file a paper copy of submissions and accompanying exhibits with the Dispute Settlement Registry. On 15 July 2020, the Dispute Settlement Registry has informed Members that it is again accessible to delegates, subject to certain precautions relating to COVID-19. Therefore, the Panel hereby lifts the suspension of the requirement to file a paper copy of submissions and accompanying exhibits. This means, first, that the requirement to file a paper copy will apply to future submissions. Second, as foreseen in the email of 17 March 2020, this also means that parties are required to submit one paper copy of all submissions filed in electronic form only since 17 March 2020; the Panel asks the parties to provide these paper copies by 5 p.m. on 21 August 2020.

Finally, the Panel refers to the Additional Working Procedures of the Panel Concerning Business Confidential Information (BCI). Paragraph 5 of those procedures specifies that when submitting a document containing BCI, the party submitting the document must place double square brackets around "[t]he specific information in question … as follows: [[xx,xxx.xx]]". Among other functions, this allows the Panel to know what information must be redacted from the public version of its report. However, the parties have submitted several exhibits as containing BCI, but without identifying the BCI in question by placing double square brackets around it. The Panel asks the parties to resubmit its exhibits containing BCI by 5 p.m. on 21 August 2020, this time identifying the specific information within each of these exhibits that is considered to be BCI, by enclosing it in double square brackets, as required by the Additional Working Procedures Concerning BCI.

ANNEX A-8

INTERIM REVIEW

1 INTRODUCTION

1.1. In compliance with Article 15.3 of the DSU, this Annex sets out the Panel's discussion and disposition of the requests for review made at interim review stage. As explained below, where we have found it appropriate, we have modified certain aspects of our Interim Report in light of the comments of the parties. We have also reflected the parties' correction of a typographical error.

1.2. Due to changes resulting from our review, the numbering of paragraphs and footnotes in the Final Report has changed from the Interim Report. The text below refers to the numbering in the Interim Report, with the numbering in the Final Report in parentheses for ease of reference, if different.

1.3. Below, we first consider the requests for review made by Pakistan, and then those by the United Arab Emirates.

2 PAKISTAN'S REQUESTS FOR REVIEW

2.1 Temporal scope of the evidence underlying initiation: paragraph 7.13

2.1. Pakistan submits that, in its brief summary of the parties' arguments on the temporal scope of the evidence underlying initiation, the Panel did not reflect Pakistan's argument that "even somewhat dated evidence can be sufficiently informative of dumping and injury to justify initiation", although the Panel addressed that argument in its analysis.[1]

2.2. The United Arab Emirates states that it has no specific comment but that the change is unnecessary, given that, as Pakistan also observed, the argument is addressed at paragraph 7.41 of the Interim Report.[2]

2.3. The Panel has added the sentence requested by Pakistan, with a minor adjustment.

2.2 Price effects

2.2.1 Significant price undercutting: paragraph 7.317

2.4. Pakistan requests us to modify paragraph 7.317 to better reflect its arguments. Specifically, Pakistan requests us to reflect that it was well known, including by Taghleef, that BOPP film was a commodity product. Thus, in its view, the commodity nature of BOPP film was part of the factual basis for the NTC's decision.[3]

2.5. The United Arab Emirates requests us to reject Pakistan's request, on the basis that the NTC did not characterize BOPP film as a commodity in its analysis, and that the proposed addition is neither relevant nor required.[4]

2.6. We have modified paragraph 7.317 in response to Pakistan's comment. Notwithstanding this, and as we discuss in the Report, we note that Pakistan has not demonstrated that the NTC considered the commodity nature of BOPP film in its price effects analysis. Thus, these revisions do not affect our analysis.

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[1] Pakistan's request for interim review, para. 2.1.
[2] United Arab Emirates' comments on Pakistan's request for interim review, p. 3.
[3] Pakistan's request for interim review, paras. 2.2-2.3 (referring to Taghleef's post-hearing submission, (Exhibit ARE-13), p. 17).
[4] United Arab Emirates' comments on Pakistan's request for interim review, p. 4.

2.2.2 Significant price depression: paragraph 7.331

2.7. Pakistan requests us to modify paragraph 7.331 to reflect its argument that Taghleef referred to BOPP film as a commodity product during the course of the NTC's investigation, thereby confirming the "fact that the commodity nature of BOPP Film is common industry knowledge".[5]

2.8. The United Arab Emirates objects to Pakistan's requests. Specifically, the United Arab Emirates objects to including language in the Panel Report that could be interpreted as accepting that "it was a fact" that the commodity nature of BOPP film was common industry knowledge. The United Arab Emirates maintains that the NTC did not acknowledge this "fact" in its published reports.[6]

2.9. We agree with the United Arab Emirates that the NTC's record does not indicate that the NTC considered the commodity nature of BOPP film when it conducted its price depression analysis. Notwithstanding this, we have modified paragraph 7.331 to better reflect Pakistan's argument.

2.3 The requirements of Article 3.4: paragraph 7.353

2.10. Pakistan asks the Panel to clarify the scope of the obligations that Article 3.4 imposes on an investigating authority, and the relationship between Articles 3.4 and 3.5. Specifically, Pakistan requests us to clarify our statement that an investigating authority is required to "place trends in the relevant context that is informative of the injury suffered by the domestic industry".[7]

2.11. In Pakistan's view, the Interim Report suggests that we interpret Article 3.4 as requiring a causation analysis, whereas this is required under Article 3.5 and not Article 3.4; and, moreover, that we require such a causation analysis for each *individual* factor.[8]

2.12. The United Arab Emirates responds that the Interim Report adequately addresses these matters.[9]

2.13. We begin with Pakistan's comment that the Interim Report suggests that we interpret Article 3.4 as requiring a causation analysis, whereas this is required under Article 3.5 and not Article 3.4. We agree with Pakistan that Article 3.4 does not require an authority to conduct a causation and non-attribution analysis in its examination of the impact of dumped imports on the domestic industry, as this is required under Article 3.5. We disagree that we have suggested otherwise in the Interim Report.

2.14. Articles 3.4 and 3.5, together with other paragraphs of Article 3, contemplate a logical progression of inquiry leading to an investigating authority's ultimate injury and causation determination.[10] As we discussed in the Interim Report, we understand the ordinary meaning of the word "evaluate" that appears in Article 3.4 to require an authority to analyse the relevant economic factors and indices having a bearing on the state of the domestic industry. Accordingly, an investigating authority must not only set out the relevant data, but also analyse these data, including the context in which they arise.[11] Merely listing yearly trends, without analysing the context in which the authority observes those trends, would not be informative of the "impact of the dumped imports on the domestic industry".[12] Such analysis cannot ignore explanations and evidence that are available to the investigating authority that may conflict with the authority's reading of the trends it

[5] Pakistan's request for interim review, paras. 2.4-2.5 (referring to Taghleef's post-hearing submission, (Exhibit ARE-13), p. 17).
[6] United Arab Emirates' comments to Pakistan's request for interim review, p. 5.
[7] Pakistan's request for interim review, paras. 2.6 and 2.11 (referring to Interim Report, para. 7.353).
[8] Pakistan's request for interim review, paras. 2.7-2.10.
[9] United Arab Emirates' comments on Pakistan's request for interim review, p. 7.
[10] See also, Appellate Body Report, *China – GOES*, para. 128.
[11] Interim Report, paras. 7.350-7.351.
[12] Anti-Dumping Agreement, Article 3.4. Because of the wording of Article 3.4, we agree that through the examination under Article 3.4 an investigating authority must "derive an understanding" of the impact of dumped imports. (See, e.g. Appellate Body Reports, *China – GOES*, para. 149; and *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 5.211).

observes.[13] This does not mean that under Article 3.4 an authority must establish the existence of a causal link between the dumped imports and the injury to the domestic industry.[14]

2.15. Articles 3.4 and 3.5 are linked. Article 3.4 requires an investigating authority to examine the impact of the dumped imports on the state of the domestic industry. The findings reached in the examination under Article 3.4 are a "building block" in an authority's demonstration of a causal relationship between the dumped imports and the injury to the domestic industry (under Article 3.5).[15] It is pursuant to Article 3.5 that the investigating authority is then required to reach a determination of whether the dumped imports *caused* injury to the domestic industry.[16]

2.16. Turning to the second issue raised by Pakistan, we also do not suggest that an investigating authority is required to undertake a causation analysis with respect to each factor; for that matter, we do not suggest that an investigating authority is required to establish that every relevant factor is indicative of injury, either.[17] To the contrary, both the injury and causation analyses ultimately require a holistic assessment. This does not mean that an authority is never required to evaluate individual injury factors in their context. When examining each injury factor under Article 3.4, the precise contours of the analysis that Article 3.4 requires depend on the factual circumstances. Where there is evidence that conflicts with the authority's reading of the trends it observes, then an objective examination of the state of the domestic industry would include a consideration of such evidence.[18] For example, with respect to the injury factor "sales", which Pakistan has pointed to[19], as we have explained in the Interim Report[20], the record of this proceeding shows that the NTC had evidence that indicated that the domestic industry's domestic sales declined at the same time as its exports increased. Given this, merely noting that domestic sales declined is not a sufficient "evaluation" of "decline in sales". Rather, the evidence that export sales had increased at the same time was relevant to the NTC's evaluation of the decline in sales, and the NTC should have engaged with it. Contrary to Pakistan's argument, this type of reasoning does not amount to requiring a demonstration of a causal link for each individual injury factor.

2.17. Pakistan also asserts that the Panel's analysis of the NTC's evaluation of some factors "appear[s] to suggest that the NTC should have effectively conducted a causation and non-attribution analysis" for certain injury factors[21] and not others.[22] We disagree with this characterization of our Report. Where the complainant argued that the NTC examined a certain factor without placing it in its context, and we found it necessary to consider such an argument, we have done so.[23] With regard to certain other factors, either the complainant made no such argument, or we did not consider it necessary to examine the argument, having already found other inconsistencies in the NTC's examination.[24]

2.18. We have changed the order of paragraphs 7.352 and 7.353, and amended paragraph 7.353 (paragraph 7.352 of the Final Report) with a view to improving the clarity of the Final Report.

2.4 Other known factors under Article 3.5

2.4.1 Paragraph 7.453

2.19. Pakistan requests us to modify paragraph 7.453 in order to better reflect its arguments. Specifically, Pakistan requests additional language to reflect its position that (a) the list of factors in

[13] Interim Report, para. 7.353 (para. 7.352 of the Final Report).
[14] Final Report, fn 480.
[15] Interim Report, para. 7.430.
[16] Final Report, fn 480.
[17] Interim Report, para. 7.352 (para. 7.353 of the Final Report).
[18] Interim Report, para. 7.353 (para. 7.352 of the Final Report).
[19] Pakistan's request for interim review, para. 2.8.
[20] Interim Report, paras. 7.388-7.391.
[21] Such as sales and profits. (Pakistan's request for interim review, para. 2.8).
[22] Such as market share, productivity, salaries and wages, return on investment, and cash flow. (Pakistan's request for interim review, para. 2.8).
[23] For example, on our analysis of the factor "profits", Interim Report, paras. 7.378-7.383; on "sales", Interim Report, paras. 7.387-7.393.
[24] For example, on "market share", Interim Report, paras. 7.363-7.369; "productivity", Interim Report, paras. 7.394-7.400; "salaries and wages", Interim Report, paras. 7.401–7.406; "return on investment", Interim Report, paras. 7.407–7.410; and "cash flow", Interim Report, paras. 7.411–7.416.

the annual report contained six factors, which Taghleef did not substantiate[25], and that (b) in the absence of additional evidence by Taghleef, it is not clear how the listed factors affected the domestic producer's business, and consequently the injury analysis, because some of the factors could, in fact, have had positive or negative effects on the industry, while others were "extremely broad and vague".[26]

2.20. The United Arab Emirates objects to the proposed addition by Pakistan, and argues that the Interim Report sufficiently summarizes and addresses Pakistan's argument.[27]

2.21. We recall that at paragraph 7.453 we outlined the arguments by Pakistan. We understand the crux of Pakistan's argument to be that Taghleef did not present sufficient evidence and argumentation to demonstrate that the factors listed in the annual report were injuring the domestic industry. We do not consider it necessary to include additional lengthy language to the Panel Report, in addition to the summary of arguments provided in the executive summary. That said, we have included an additional sentence to that paragraph to address Pakistan's concerns.

2.4.2 Paragraph 7.457

2.22. Pakistan requests us to modify paragraph 7.457 in order to more accurately reflect its arguments. Specifically, Pakistan requests us to add language to reflect its position that the annual report of the domestic producer was not sufficient evidence to warrant a non-attribution analysis because publicly listed companies like Tri-Pack face many different obligations and incentives when preparing their annual reports. Pakistan asserts that these obligations "might require the disclosure of certain information to shareholders, including potential but unconfirmed factors that might affect the company's future performance", which limits the "value of annual reports as evidence of other causal factors, especially when presented without any further evidence".[28]

2.23. The United Arab Emirates maintains that the Panel sufficiently summarized and addressed Pakistan's arguments. Moreover, the United Arab Emirates adds that Pakistan "appears to add arguments to paragraph 7.457, which are not apparent from its submissions".[29] Thus, the United Arab Emirates argues that the Panel should reject this request on the basis that it introduces new grounds, which is not appropriate at the interim review stage.[30]

2.24. We disagree with the United Arab Emirates that Pakistan raises new arguments.[31] We have modified the language at paragraph 7.457, and added footnote 625 to paragraph 7.453, to address Pakistan's concerns, albeit not in the exact language suggested by Pakistan.

2.25. Moreover, Pakistan argues that the Panel appears to endorse a "lenient standard" as to the amount of evidence that an investigated company needs to provide an investigating authority in order to trigger the obligation to undertake non-attribution analysis.[32]

2.26. We agree with the position taken by other panels that if there is no evidence to indicate that a factor is injuring the domestic industry, an investigating authority is under no obligation to undertake a non-attribution analysis. In the circumstances of this dispute, we maintain our assessment that the NTC had sufficient evidence, at a minimum, to consider whether the factors identified were injuring the domestic industry. We recall that in its annual report, the domestic producer listed certain factors that, in the words used by the domestic producer, "directly hit[]" its domestic sales and margins.[33] Taghleef pointed to these factors during the domestic proceedings, and cited the annual report as evidence.[34] The factors at issue were identified by the domestic producer itself, in a formal document. As we discuss in the Interim Report, a domestic producer is

[25] Pakistan's request for interim review, para. 2.13.
[26] Pakistan's request for interim review, para. 2.14.
[27] United Arab Emirates' comments on Pakistan's interim review, p. 9.
[28] Pakistan's request for interim review, paras. 2.17 and 2.19.
[29] United Arab Emirates' comments on Pakistan's interim review, p. 10.
[30] United Arab Emirates' comments on Pakistan's interim review, p. 10 (referring to Panel Report, *Japan – Apples (Article 21.5 – US)*, para. 7.23).
[31] Pakistan's written opening statement, para. 89; response to United Arab Emirates' written opening statement, paras. 57-58.
[32] Pakistan's request for interim review, para. 2.18.
[33] 2009 Tri-Pack Films' Annual Report, (Exhibit ARE-24b), pp. 17-18.
[34] Taghleef's post-hearing submission, (Exhibit ARE-13), pp. 21-22.

in the best position to identify factors that are injuring it. We are not convinced by Pakistan's argument that the annual report lacks probative value because it may have been prepared with different incentives and obligations, which "might require the disclosure of certain information to shareholders, including potential but unconfirmed factors that might affect the company's future performance". The domestic producer did not describe these as "potential but unconfirmed factors", and as we have already discussed, that these factors were identified in official documents by the domestic producer gives them weight. The NTC should have, at a minimum, considered whether these factors were, indeed, injuring the domestic industry. However, the NTC did not, even implicitly, make this consideration, as is evidenced by its statement that "no other factor was pointed out by any interested party which may be causing injury to domestic industry except the international crisis".[35] For these reasons, we do not vary our analysis in the Interim Report. However, for clarity, we have added footnote 632 to paragraph 7.457, and added a new paragraph 7.459 of the Final Report.

2.5 Applicability of Article 2 in the sunset review: section 7.12.2.1.1

2.27. Pakistan requests us to reflect its argument that the NTC's sunset review questionnaire did not ask for the transaction-specific data that would have been necessary to determine individual dumping margins.[36] According to Pakistan, we sought to "discern the NTC's *subjective intent*" in order to decide whether the NTC relied on dumping margins in determining whether dumping was likely to continue or recur.[37] Pakistan submits that the fact that the sunset review questionnaire did not seek transaction-specific data establishes that the NTC's "subjective intent" was not to calculate and rely upon dumping margins.[38]

2.28. The United Arab Emirates submits that parties may only request the review of "specific aspects" of the Interim Report and that they may not, at this stage, reargue points already made in the course of the panel proceedings.[39] In the United Arab Emirates' view, Pakistan's request for review is inappropriate because "it exceeds the limited mandate of interim review" and because Pakistan seeks to relitigate issues already addressed during these panel proceedings.[40]

2.29. We disagree with Pakistan's reading of our Interim Report. In considering whether Article 2 was applicable to the NTC's calculations of dumping margins we did not seek "to discern the NTC's subjective intent".[41] Instead, we relied on the steps *actually taken* by the NTC in performing its calculations, together with the provisions of domestic law referred to in the sunset determination and the wording of the Report on sunset determination.[42]

2.30. Nonetheless, we accept Pakistan's request to reflect in the Final Report its argument that the NTC's sunset review questionnaire does not envisage the gathering of transaction-specific data. We have thus reflected and addressed Pakistan's argument in a new paragraph (paragraph 7.559 of the Final Report). For further clarity, we have also made certain minor adjustments to the wording of paragraphs 7.556 and 7.558 of the Interim Report (paragraphs 7.557 and 7.560 of the Final Report).

2.6 Finding of exportable surplus in the sunset review: paragraph 7.585

2.31. Pakistan requests review of paragraph 7.585 of the Interim Report (paragraph 7.588 of the Final Report), relating to the NTC's findings on exportable surplus. According to Pakistan, paragraph 7.585 gives the misleading impression that both the NTC and Pakistan made inaccurate statements about the sunset review proceedings.[43] Pakistan underlines that in response to Panel question No. 93, Pakistan pointed to data from the exporter questionnaires that the NTC relied upon, that those data were part of the record of the sunset review, and that the NTC in its Report on sunset determination spoke of relying on information on "production, domestic and export sales, installed production capacities, and inventories etc. before and after imposition of antidumping duties and

[35] Report on final determination (2013), public version, (Exhibit ARE-2), para. 48.1.
[36] Pakistan's request for interim review, paras. 2.21-2.22.
[37] Pakistan's request for interim review, para. 2.21. (emphasis original)
[38] Pakistan's request for interim review, para. 2.21.
[39] United Arab Emirates' comments on Pakistan's request for interim review, p. 11.
[40] United Arab Emirates' comments on Pakistan's request for interim review, p. 11.
[41] Pakistan's request for interim review, para. 2.21. (emphasis removed)
[42] Interim Report, e.g. paras. 7.556 and 7.558 (paras. 7.557 and 7.560 of the Final Report).
[43] Pakistan's request for interim review, para. 2.25.

any potential change in future".[44] For these reasons, Pakistan argues that our statement that Pakistan did not point to evidence that the NTC actually relied on those data is misleading. Pakistan also suggests that we specify that our statements are limited to the issue of the product scope of the export data.[45]

2.32. The United Arab Emirates considers that "paragraph 7.585 is accurate in that there is no record evidence that the NTC 'relied' on the information submitted by Taghleef in rendering the finding on exportable surplus."[46] The United Arab Emirates submits that a review of the NTC's determination shows that its finding of exportable surplus was based on "(i) a statement by Taghleef on its website, and (ii) 'broadly categorized' trademap data".[47] According to the United Arab Emirates, Pakistan "is again unduly seeking the review of specific Panel findings by re-litigating matters already addressed in the proceeding".[48]

2.33. In response to Pakistan's review request, we have modified paragraphs 7.585-7.586 of the Interim Report (paragraphs 7.588-7.589 of the Final Report) and added a new paragraph 7.583. In each instance, we describe more specifically the relevant facts.

2.34. Thus, we indicate more specifically that in answer to a question we posed during the written exchange that replaced the second substantive meeting, Pakistan pointed to certain data in the questionnaire replies of cooperating exporters as being data that the NTC relied on in reaching its finding of exportable surplus.[49] We then indicate that, however, aside from referring generically to "information" submitted by "cooperating exporters" or "Taghleef Dubai", the Report on sunset determination only discusses and only appears to rely upon the website statements on production capacity and the "broadly categorized" export data from the International Trade Centre.[50]

3 THE UNITED ARAB EMIRATES' REQUESTS FOR REVIEW

3.1 Temporal scope of the evidence underlying the determination of dumping: paragraph 7.64

3.1. The United Arab Emirates requests review of paragraph 7.64 of our Interim Report. Paragraph 7.64 is part of our discussion of the United Arab Emirates' claim that the determination of dumping was inconsistent with Article 2.1, on which we have found in favour of the United Arab Emirates. It is also incorporated by reference[51] into our discussion of the United Arab Emirates' claim that the determination of injury was inconsistent with Article 3.1, on which we have also found in favour of the United Arab Emirates.

3.2. At paragraph 7.64, we very briefly stated the parties' position on the relevant date of final determination for assessing the temporal scope of the evidence on which the NTC based its determination of dumping (and as subsequently discussed, of injury). As the United Arab Emirates observes, we did not restate the details of the parties' arguments in that regard, and instead we referred to the relevant portions of the parties' submissions.[52] We then explained the reasons for our conclusion as to the relevant date.[53]

3.3. The United Arab Emirates requests the Panel to reflect the detail of its arguments on this point, rather than just referencing the relevant submissions. Specifically, the United Arab Emirates suggests an addition that is double the length of the Panel's current statement of the positions of both parties, e.g. to reflect the United Arab Emirates' arguments on the effective date of the 2015 determination[54] and on a statement by Pakistan's Anti-Dumping Appellate Tribunal.

[44] Pakistan's request for interim review, paras. 2.26-2.27.
[45] Pakistan's request for interim review, para. 2.28.
[46] United Arab Emirates' comments on Pakistan's request for interim review, p. 12.
[47] United Arab Emirates' comments on Pakistan's request for interim review, p. 12.
[48] United Arab Emirates' comments on Pakistan's request for interim review, p. 12.
[49] Final Report, para. 7.583.
[50] Final Report, paras. 7.583 and 7.588 (the latter was para. 7.585 of the Interim Report).
[51] Interim Report, para. 7.92.
[52] United Arab Emirates' request for interim review, para. 2.
[53] Interim Report, para. 7.65.
[54] The Panel has noted in several instances elsewhere in the report the effective dates of the 9 April 2015 determination. (See para. 7.515 and fn 699 (para. 7.516 and fn 709 of the Final Report).

3.4. Pakistan considers it important that both parties feel that their arguments are reflected in the report but observes that this must be done even-handedly. Therefore, if the Panel accepts the United Arab Emirates' review request, Pakistan asks the Panel to include a summary of its own arguments, which it provides in its request for review.[55]

3.5. We recall that we considered the arguments of the parties and we explained the basis for our finding on the question of the relevant date of final determination; we also recall that although we did not choose the reference date preferred by the United Arab Emirates, our findings on the relevant claims are in favour of the United Arab Emirates. We do not consider that it is always necessary or desirable for a panel report to include lengthy summaries of the parties' arguments, in addition to those provided by the parties in their executive summaries. In particular, we do not consider it necessary to reflect the detail of the arguments the United Arab Emirates is referring to, in the context of claims under which we have found in favour of the United Arab Emirates.

3.6. Nonetheless, we have modified paragraph 7.64 of the Panel Report to indicate the tenor of the parties' arguments, although more briefly than suggested in the United Arab Emirates' request for review.

3.2 Choice of cost data: section 7.4.3

3.7. The United Arab Emirates makes a number of comments regarding the Panel's treatment of the United Arab Emirates' Article 2.2, 2.2.1, 2.2.1.1, and 2.2.2 claims.

3.8. First, the United Arab Emirates asserts that Interim Report's statement that "Taghleef declined to provide its audited financial statements to the NTC" does not accurately reflect Taghleef's conduct during the course of the underlying investigation.[56] Specifically, the United Arab Emirates asserts that, "[w]hile no copy of the audited accounts was submitted to the NTC directly for the good reasons explained by Taghleef, the record shows that Taghleef did make available the audited annual reports at its premises for the NTC's verification".[57] The United Arab Emirates invites the Panel to revise the statement that Taghleef "declined" to provide its audited financial statements to the NTC because the "use of the term 'decline' suggests a different response that the one actually provided by Taghleef".[58]

3.9. Second, the United Arab Emirates observes that the NTC "decided to use" Taghleef's financial data "irrespective of the fact" that the NTC had not seen Taghleef's audited accounts. Given this, the United Arab Emirates asserts that the NTC's "preference for the Appendix 2 data" cannot be explained "other than by the fact that it allowed the NTC to reject many of the sales as allegedly below cost while that was not the case with the Appendix D-3 cost data". The United Arab Emirates suggests that this "inconsistency … merits being reflected in the Report".[59]

3.10. Third, the United Arab Emirates states that the Interim Report's conclusion that the NTC "could not" independently evaluate Taghleef's Appendix 2 and its Appendix D-3 cost information against Taghleef's audited accounts is factually inaccurate.[60] The United Arab Emirates suggests that the only reason the NTC "could not" make this type of assessment was because "the NTC deprived itself of the opportunity to do so" when it decided not to conduct an on the spot verification on Taghleef at which it "could have" examined these accounts. The United Arab Emirates therefore requests the Panel to amend the Interim Report by deleting "consideration c)" from paragraph 7.171.[61] For ease of reference, "consideration c)" reads as follows:

> (c) absent these clarifications, the NTC did not have the means to separately evaluate whether the appendix D-3 data were objectively superior to appendix 2 because the NTC could not weigh this data against the company's audited financial statements.

[55] Pakistan's comments on United Arab Emirates' request for interim review, paras. 2.1-2.4.
[56] United Arab Emirates' request for interim review, para. 5 (quoting Interim Report, para. 7.164).
[57] United Arab Emirates' request for interim review, para. 5.
[58] United Arab Emirates' request for interim review, para. 6.
[59] United Arab Emirates' request for interim review, para. 9.
[60] United Arab Emirates' request for interim review, para. 10 (referring to Interim Report, para. 7.171).
[61] United Arab Emirates' request for interim review, para. 10.

3.11. Fourth, the United Arab Emirates asserts that the Panel incorrectly found that the explanation in the NTC's 2013 Report on final determination applied to Taghleef LLC and that this finding, in turn, led the Panel to improperly conclude "that the NTC's Report on final determination both summarizes and responds to the cost-related arguments that Taghleef submitted to the NTC regarding the appendix D-3 and appendix 2 data".[62] The United Arab Emirates supports this assertion, in part, by stating that the section of the 2013 Report on final determination on which the Panel's finding is based "concerns only 'Taghleef *Oman*' i.e. Taghleef SAOC and not the relevant exporter in this dispute, Taghleef Dubai, i.e. Taghleef LLC".[63] The United Arab Emirates invites the Panel to "reconsider its approach to this issue and to revise" its findings at paragraphs 7.124 and 7.170 accordingly.[64]

3.12. Pakistan responds to the United Arab Emirates' request that the Panel refrain from suggesting that Taghleef "declined" to provide its audited accounts to the NTC by, among other things, noting that (a) it agrees with the Panel's choice of the word "decline"[65]; (b) because they contain "subjective views", the United Arab Emirates' proposed edits should not be incorporated into a paragraph of the Report that contains the Panel's analysis and characterization of the facts[66]; and (c) while Pakistan does not object "if the Panel wishes to clarify … the position expressed by the UAE", the Panel should signal that any such clarification reflects "the UAE's subjective view and not an objective description of the facts that is shared by either the Panel or Pakistan".[67]

3.13. Pakistan responds to the United Arab Emirates' request that the Panel reconsider its finding that the explanation in the NTC's 2013 Report on final determination applied to Taghleef LLC (i.e. due to the Report's reference to Taghleef Oman) by, among other things, noting that (a) the 2013 Report's reference to Taghleef Oman appears in a section of the Report responding to "comments on the Statement of Essential Facts (Disclosure) by 'Taghleef Industries'" that reflected the "combined comments of *both* Taghleef Industries LLC (Taghleef Dubai) and Taghleef Industries SAOG (Taghleef Oman)", (b) Taghleef Industries and Taghleef Oman were "frequently referred to *collectively* during the investigation", (c) the two Taghleef companies submitted documents to the NTC that either "explicitly refer to each other jointly as 'Taghleef'" or use the term "'Taghleef's' … without drawing distinctions between the respective submissions … of the two companies".[68]

3.14. We consider these comments in turn.

3.15. With respect to the question of whether we mischaracterized Taghleef's conduct when the Interim Report noted that the company "declined" to provide its audited financial statements to the NTC, we appreciate that the United Arab Emirates takes the view that Taghleef did not "decline" to produce these materials. Upon careful review, however, we believe this word accurately characterizes Taghleef's position in the underlying investigation.

3.16. To "decline" means, "[n]ot to consent or agree to doing, or to do (something suggested, asked, etc.); hence, practically = refuse v.1: but without the notion of active repulse or rejection conveyed by the latter word, and therefore a milder and more courteous expression".[69]

[62] United Arab Emirates' request for interim review, paras. 11-13 (referring to Interim Report, paras. 7.124 and 7.170).
[63] United Arab Emirates' request for interim review, para. 11. (emphasis original)
[64] United Arab Emirates' request for interim review, para. 13.
[65] Pakistan's comments on United Arab Emirates' request for interim review, para. 3.8.
[66] Pakistan's comments on United Arab Emirates' request for interim review, para. 3.6.
[67] Pakistan's comments on United Arab Emirates' request for interim review, paras. 3.5-3.8.
[68] Pakistan's comments on United Arab Emirates' request for interim review, para. 3.22. (emphasis original)
[69] Oxford English Dictionary Online, definition of "decline" https://oed.com/view/Entry/48286?rskey=djoO0t&result=2&isAdvanced=false#eid (accessed 2 December 2020), meaning 14b.

3.17. With this definition in mind, we observe that the record of this proceeding indicates that, when the NTC asked Taghleef, at Section F of the exporter questionnaire to "Attach an English version of the audited accounts"[70], Taghleef did not do so. Instead, Taghleef stated that:

[[***]][71]

3.18. In addition to indicating that it did not agree to attach its audited accounts to its questionnaire response, we note that Taghleef also conditioned the future production of these accounts on the NTC requesting and conducting an on the spot verification. Specifically, we observe that Taghleef stated that, [[***]].[72]

3.19. We note that Taghleef's Section F questionnaire response does not explicitly state that the company "declined" or "refused" to provide its audited financials to the NTC. However, as the definition of the word "decline" indicates, one need not actively repulse or reject "something suggested" or "asked" in order for it to be considered to have been declined. Taghleef did not consent to provide the audited financials when so asked, and conditioned access to these statements on the NTC conducting an on the spot verification visit, which the Anti-Dumping Agreement does not require. Thus, the word "declined" accurately describes Taghleef's response to the NTC's request for information, and we have not made any changes to paragraph 7.164 in the Final Report.

3.20. We next turn to the United Arab Emirates' suggestion that we should adjust our findings to reflect the fact that, as Taghleef's audited accounts were not provided to the NTC, the only explanation for the NTC's decision to use Taghleef's appendix 2 data is that "it allowed the NTC to reject many of [Taghleef's] sales as allegedly below cost".[73] We disagree.

3.21. We have evaluated in considerable detail the facts and circumstances surrounding NTC's decision to use the data that Taghleef provided in appendix 2 rather than appendix D-3, including at paragraphs 7.154 to 7.171 of the Interim Report. This evaluation led us to observe, among other things, that (a) "we are of the view that the various cost information that Taghleef provided to the NTC both in its responses to the questionnaire and in follow-on exchanges, and the representations that Taghleef made to the NTC related to this data appear to be somewhat conflicted"[74]; and (b) "when an authority is presented with what appear to be conflicting sets of company cost data, the phrase 'reasonably reflect' in Article 2.2.1.1 provides the authority with a degree of discretion to select the data that correspond better to the company's actual costs absent evidence that demonstrates that a particular dataset is clearly superior (for example data reflected in audited financial statements)".[75]

3.22. Nothing in the United Arab Emirates' comment causes us to question our conclusion regarding the propriety of the manner in which the NTC established and evaluated the facts surrounding Taghleef's cost data. We therefore have not made any changes in the Final Report in response to this comment.

3.23. With respect to the question of whether the Panel erred in concluding that the NTC "could not" independently evaluate Taghleef's cost data against the company's audited accounts, we disagree with the premise of the United Arab Emirates' suggestion that the NTC "could have" performed this analysis but "deprived itself of the opportunity" to do so when it elected not to conduct an on the spot verification of Taghleef[76], as we again note that the Anti-Dumping Agreement does not require an authority to conduct an on the spot verification. We have therefore not made any changes to paragraph 7.171 of the Final Report.

3.24. Finally, with respect to the United Arab Emirates' assertion that we erred when we determined that the explanation in the NTC's 2013 Report on final determination applied to Taghleef LLC, we also disagree. We recognize that the specific portion of the Report on final determination that is the

[70] NTC's blank exporter questionnaire, (Exhibit PAK-37), p. 19; Taghleef's questionnaire response, (Exhibit ARE-16 (BCI)), p. 29.
[71] Taghleef's questionnaire response, (Exhibit ARE-16 (BCI)), p. 29.
[72] Taghleef's questionnaire response, (Exhibit ARE-16 (BCI)), p. 29.
[73] United Arab Emirates' request for interim review, para. 9.
[74] Interim Report, para. 7.163.
[75] Interim Report, para. 7.166.
[76] United Arab Emirates' request for interim review, para. 10.

focus of this comment does, in fact, state that "the [NTC] calculated cost of production of Taghleef Oman", rather than Taghleef LLC.[77]

3.25. Notwithstanding this, we note that the Panel raised this topic directly with Pakistan in a written question after the first substantive meeting of the parties which read as follows:

> 83. TO PAKISTAN. Annexure IV to 2013 Report on Final Determination contains, at pages 72 and 73, a comment made by Taghleef on the Statement of Essential Facts, with respect to the cost data used by the NTC in determining normal value. The response to that comment refers to "Taghleef Oman" and does not mention Taghleef (Taghleef Industries LLC, which we understand to the UAE-based entity). Please clarify if the reference to "Taghleef Oman" alone is correct.[78]

3.26. Pakistan answered this question by stating, "[n]o, the reference is to both Taghleef Oman and to Taghleef Industries LLC/Taghleef Dubai. The omission of Taghleef Industries on pages 72 and 73 of the Final Determination, in respect of the company's comment on the Statement of Essential Facts, was not intentional and reflects a mere clerical error".[79] Pakistan's answer also noted that (a) during the investigation Taghleef Oman and Taghleef industries were frequently referred to "in a combined manner"; (b) both companies were represented by the same law firm; and (c) the United Arab Emirates itself suggested that the two entities were to some degree interchangeable when Pakistan pointed out that the purchasing agreement that appears at Exhibit ARE-21 (BCI) appeared to relate only to Taghleef Oman.

3.27. Pakistan reiterated and expanded upon several of these points at the second substantive meeting of the panel. Specifically, Pakistan observed that the NTC's reference to "Taghleef Oman" appears in a section of the 2013 Report on final determination that is titled "Comments of Taghleef Industries". Pakistan asserted this confirmed that this section of the Report "contains the combined comments of both Taghleef Industries LLC (Taghleef Dubai) and Taghleef Industries SAOG (Taghleef Oman)". Given this, Pakistan again asserted that "the reference to Taghleef Oman … is a mere typographical error"[80] and that "the response of the NTC … is valid for both companies".[81]

3.28. While we observe that the United Arab Emirates reiterated its position that the 2013 Report on final determination's reference to Taghleef Oman should be considered to be evidence that the NTC did not adequately explain its decision to use appendix D-3 when conducting its dumping analysis of Taghleef LLC[82], we also observe that the United Arab Emirates does not appear to have significantly responded to certain factual elements that Pakistan highlights to support its position that this reference was a typographical error. Among other things, we note that the United Arab Emirates does not appear to contest that the reference to Taghleef Oman at issue in this comment appears in a section of the 2013 Report on final determination titled "Comments of Taghleef Industries".

3.29. We weighed this matter when making our findings in the Interim Report. In light of the information and argument noted above, we accepted that the NTC's reference to Taghleef Oman on page 72 of its 2013 Report on final determination is a typographical error and that the NTC's response on this page is valid for both companies, as reflected by the "[sic]" notation after the words "Taghleef Oman", at paragraph 7.124 of the Interim Report. We appreciate that this factual finding could be stated more clearly, and we have therefore made clarifying edits in our Final Report to more fully reflect this finding.

3.3 Judicial economy relating to the sunset review: sections 7.12.4 and 7.12.5

3.30. The United Arab Emirates requests us "to re-consider [our] use of judicial economy … with respect to the UAE's claims under Article [sic] 11.1 and 11.3 of the Anti-Dumping Agreement that the NTC's original determination was so flawed that it rendered the continued imposition of the

[77] Report on final determination (2013), public version, (Exhibit ARE-2), pp. 71-73.
[78] Panel question No. 83. (fn omitted)
[79] Pakistan's response to Panel question No. 83, p. 37. (emphasis original)
[80] Pakistan's written opening statement, paras. 52 and 54.
[81] Pakistan's response to Panel question No. 83, p. 37.
[82] United Arab Emirates' second written submission, para. 101; comments on Pakistan's written opening statement, paras. 16-17.

duties inconsistent with the Anti-Dumping Agreement".[83] The United Arab Emirates refers to the findings of the Appellate Body in *US – Tuna II (Mexico)*, and suggests that we might be exercising false judicial economy.[84]

3.31. Pakistan responds that we were within our discretion to exercise judicial economy with respect to these claims, and notes that the specific facts of this dispute differ from prior proceedings in which panels were found to have falsely exercised judicial economy.[85] In particular, as regards Article 11.1, Pakistan notes that Article 11.1 sets forth an overarching principle, and that moreover that principle is operationalized in Article 11.3, which is a provision on which the Panel has already made a finding of inconsistency; as a result, Pakistan submits that deciding the claim under Article 11.1 is not necessary to resolve the dispute.[86] As regards Article 11.3, Pakistan notes that we have found inconsistencies with this provision based on other arguments by the United Arab Emirates, and that there is no previous dispute in which a panel has been found to exercise false judicial economy by not addressing a particular argument by a complainant, having otherwise found a measure inconsistent with the relevant claim.[87]

3.32. We begin with the United Arab Emirates' request regarding Article 11.3. We have not exercised judicial economy with respect to the United Arab Emirates' claim that the sunset determination of 1 December 2016 was inconsistent with Article 11.3.

3.33. In the context of WTO proceedings, judicial economy consists of refraining from addressing a *claim* against a given measure, when a panel has already found that the same measure is inconsistent with other provision(s) invoked by the complainant (provided that the existing findings suffice to resolve the dispute).[88] We have already found that the sunset determination of 1 December 2016 is inconsistent with Article 11.3, on a number of grounds. Thus, what the United Arab Emirates is asking for is that we consider a UAE argument under Article 11.3 that we have not addressed, and find that, also on that basis, the sunset determination of 1 December 2016 is inconsistent with the same provision.

3.34. However, a panel has the discretion to address only those arguments it deems necessary to resolve a particular claim[89]: having already found that the sunset determination is inconsistent with Article 11.3 for multiple reasons, considering this further argument by the United Arab Emirates is not necessary to resolve the claim under Article 11.3.

3.35. We now turn to the United Arab Emirates' request concerning Article 11.1.[90] We have indeed exercised judicial economy on the United Arab Emirates' claim that the sunset determination of 1 December 2016 is inconsistent with Article 11.1.

3.36. As we have discussed in the Interim Report, a panel may decline to review a claim against a challenged measure if (a) it has already found that the same measure, (b) is inconsistent with one or more provisions of the covered agreements, and (c) findings under the additional claim are not necessary to resolve the dispute.[91]

3.37. The measure to which the United Arab Emirates' review request pertains is the sunset determination of 1 December 2016. We have already found that the sunset determination of 1 December 2016 is inconsistent with Articles 11.3 and 11.4 of the Anti-Dumping Agreement. Thus, the first two conditions for exercising judicial economy are met. It is not entirely clear to us whether

[83] United Arab Emirates' request for interim review, para. 17.
[84] United Arab Emirates' request for interim review, para. 19 (referring to Appellate Body Report, *US – Tuna II (Mexico)*, paras. 403 and 405).
[85] Pakistan's comments on United Arab Emirates' request for interim review, paras. 4.1-4.8.
[86] Pakistan's comments on United Arab Emirates' request for interim review, para. 4.4.
[87] Pakistan's comments on United Arab Emirates' request for interim review, para. 4.7.
[88] See e.g. Appellate Body Reports, *Canada – Wheat Exports and Grain Imports*, para. 133; and *EC – Fasteners (China)*, para. 511.
[89] See e.g. Panel Report, *Korea – Stainless Steel Bars*, para. 7.183.
[90] We recall that in support of its Article 11.1 claim, the United Arab Emirates had argued that the sunset review determination was inconsistent with Article 11.1 on several grounds. (Interim Report, fn 859 (fn 875 of the Final Report)). In requesting that the Panel reconsider its exercise of judicial economy, the United Arab Emirates limits its request to one of these grounds. (United Arab Emirates' request for interim review, para. 17).
[91] Interim Report, para. 7.49.

the United Arab Emirates is arguing that the third condition – that the additional finding must not be necessary to resolve the dispute – has not been fulfilled here, or whether it only considers the additional finding "desirable and prudent"[92], but not strictly necessary. Be that as it may, we consider the United Arab Emirates request through the prism of whether it is necessary to resolve the dispute.

3.38. Our findings under Articles 11.3 and 11.4 relate to flaws in the sunset review determination itself. The claim-argument pairing[93] that the United Arab Emirates urges us to decide on goes to whether the sunset review determination is also inconsistent with the Anti-Dumping Agreement as a result of the inconsistencies in the original determination, which the sunset review determination extended for a further five years.[94]

3.39. We recall that we have indeed found a number of inconsistencies in that original determination[95]; we further recall that Members have discretion to elect how to comply with our findings and recommendations, provided they do so in a manner consistent with the covered agreements[96]; and we also recall that because of the "fundamental nature and pervasiveness of the inconsistencies we have found", we have suggested "that Pakistan implement our recommendation by withdrawing the anti-dumping measures it has imposed on BOPP film from the United Arab Emirates".[97] We do not consider it necessary to resolve this dispute also to make a finding on whether the sunset review determination was inconsistent with Article 11.1 because "the … original determination was so flawed that it rendered the continued imposition of the duties inconsistent" with that provision.

3.40. We therefore decline these requests for review by the United Arab Emirates.

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[92] United Arab Emirates' request for interim review, para. 18.
[93] See fn 90 above.
[94] United Arab Emirates' request for interim review, paras. 17-20.
[95] Interim Report, para. 8.1(a).
[96] Interim Report, para. 9.4.
[97] Interim Report, para. 9.6. See also Pakistan's comments on United Arab Emirates' request for interim review, para. 4.8.

ANNEX B

ARGUMENTS OF THE PARTIES

ANNEX B-1

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS
OF THE UNITED ARAB EMIRATES

I. INTRODUCTION

1. This dispute concerns the anti-dumping duty imposed by Pakistan on biaxially-oriented polypropylene film ("BOPP Film") from the United Arab Emirates ("UAE") and the continued application of the measure following a sunset review. This measure violates Pakistan's obligations under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the General Agreement on Tariffs and Trade 1994 ("GATT 1994").

II. LEGAL CLAIMS

II.1. PAKISTAN INITIATED THE INVESTIGATION IN VIOLATION OF ARTICLES 5.2, 5.3, AND 5.8 OF THE ANTI-DUMPING AGREEMENT

2. By initiating the BOPP Film investigation on 23 April 2012 based on an application that contained outdated information up to 31 December 2009 only, Pakistan acted inconsistently with Articles 5.2, 5.3, and 5.8 of the Anti-Dumping Agreement.

3. First, the application did not contain all evidence reasonably available to the applicant on dumping, injury and the causal link – thus violating Article 5.2. The 12 April 2010 application for the initiation of the investigation provided information that ended on 31 December 2009. At the time of the initiation in April 2012, however, there was certainly more recent evidence available to the applicant. However, none was provided. The NTC never explained on what basis it considered that the April 2010 application contained all evidence reasonably available to the applicant in April 2012 when it initiated the investigation based on this application. The application thus failed to comply with this important minimum standard of containing "such information as is reasonably available" when initiating the investigation and including "relevant evidence".

4. Second, the National Tariff Commission of Pakistan ("NTC") failed to examine the accuracy and adequacy of the application information to determine whether there was "sufficient evidence" to justify the initiation of the investigation in April 2012 – thus violating Article 5.3. Instead, the NTC initiated the investigation based on information that was neither relevant nor probative of the situation of dumping causing injury at the time of initiation. The NTC made the unsubstantiated assertion that the application provided "sufficient evidence" to support initiation, but provided no explanation how that could be, given the stale nature of the data. Indeed, information that pre-dates the initiation date by more than two years is not of the type that could support a *prima facie* case of dumping, injury, and causal link. This is not simply a matter of degree in terms of quantity and quality of the evidence, it goes to the essence of the minimum requirement that application information should be "accurate", "adequate", and "sufficient" to the enquiry into current dumping causing injury. The obligation in Article 5.3 focuses on examining the accuracy and adequacy of the evidence "provided in the application" to determine whether there is sufficient evidence to justify the initiation. It is clear that the application contained information only until December 2019. Even if the NTC considered information until June 2010, this was not evidence "provided in the application". In any case, even such June 2010 information was too dated for it to be able to provide "adequate" evidence of dumping causing injury that would be "sufficient" to initiate the investigation in April 2012.

5. Third, the NTC failed to reject the application that did not contain sufficient evidence to justify the initiation, thus violating Article 5.8. Given the obvious lack of accurate, adequate, and sufficient evidence in the 2010 application for the purpose of initiating the investigation in 2012, the NTC was required to reject the application and refrain from initiating the investigation. No objective and unbiased investigating authority could have found that there was sufficient evidence to initiate an investigation. Thus, in accordance with Article 5.8, the NTC was under an obligation ("shall") to reject the application, but failed to do so.

II.2. PAKISTAN'S DETERMINATION OF DUMPING CAUSING INJURY WAS BASED ON OUTDATED INFORMATION THAT DID NOT CONSTITUTE POSITIVE EVIDENCE IN VIOLATION OF ARTICLES 2.1, 3.1, 3.2, 3.4, 3.5, 9.1, 9.3, AND 11.1 OF THE ANTI-DUMPING AGREEMENT

6. Pakistan acted inconsistently with Articles 2.1, 3.1, 3.2, 3.4, 3.5, 9.1, 9.3, and 11.1 of the Anti-Dumping Agreement when it imposed the BOPP Film measure based on information of dumping and injury that pre-dated the imposition of the measure by almost 5 years and, in any case, by more than three years.

7. The selection of the period of investigation ("POI") is a critical element in any anti-dumping investigation. The POI determines the data that will be examined for determining dumping, injury, and causation. The text of the Anti-Dumping Agreement reflects the requirement that there must be a real-time link between the investigation leading to the imposition of measures and the data on which the investigation is based. Anti-dumping measures may only be imposed to offset dumping *currently* causing injury. Indeed, Article 2.1 defines "dumping" with reference to an ongoing situation, namely "a product … *being dumped*"; Article 3.1 requires a determination of injury to be based on "*positive* evidence" (i.e. evidence that is "relevant, pertinent, reliable, and creditworthy … with respect to the *current* situation"); Article 3.5 requires that the "dumped imports *are* … *causing injury*"; and Article 11 requires measures to "remain in force *only as long as and to the extent necessary* to counteract *dumping which is causing injury*". These provisions confirm that anti-dumping measures are only allowed to offset dumping *currently* causing injury at the time of imposition. That is why the Committee on Anti-Dumping Practices recommended that the POI end as close as practicable to the initiation of the investigation, so that the information is relevant at the time of imposition of the measure.

8. In the BOPP Film investigation, there was no real-time link between the data examined to determine dumping, injury and causation, on the one hand, and the imposition of the measure, on the other. The POI for dumping and injury ended in June 2010, while the investigation was initiated in April 2012 and the final determination was made in April 2015. Thus, there was a gap of almost two years (22 months) between the end of the POI and the start of the investigation and a gap of almost five years between the end of the POI and the final imposition of duties. The remoteness of the POI was worse than that which resulted in a violation in *Mexico – Anti-Dumping Measures on Rice*, where there was a 15-month gap between the end of the POI and the initiation, and another gap of almost three years between the end of the POI and the imposition, which raised serious doubts about the existence of a sufficiently relevant nexus between the POI data and current injury. In the present dispute, even if February 2013 is accepted as the date of the final determination, the POI data on dumping and injury was just under three years old by the time of imposition of the measure. A gap of 32 months does not reflect an inherent real-time link between the data on which the investigation is based and the imposition of the measure.

9. In addition, it is not only the significant nature of the temporal gap between the POI and the imposition of the measure that is the basis for the UAE's legal claims. The UAE has also highlighted the facts that (i) the selected POI was essentially what was proposed by the applicant; (ii) the NTC did not establish that practical problems necessitated this particular POI; (iii) the NTC never established that updating the information was not possible; (iv) the NTC made no attempt at updating the information, although there was no lack of cooperation from interested parties; and (v) the NTC provided no reason why it was not seeking more recent information. These remoteness of the POI and these circumstances support the UAE's claims of violation.

10. Specifically, the UAE claims an inconsistency with Article 2.1 because the NTC failed to make a proper finding of the product "being dumped"; inconsistencies with Articles 3.1, 3.2, 3.4, and 3.5 because the finding of injury and causation were not based on "positive evidence" and did not comply with the requirement to find that the dumped imports were "causing injury"; inconsistencies with Articles 9.1 and 9.3 because duties were imposed without satisfying all requirements for the imposition of duties; and inconsistency with Article 11.1 because the measure was maintained without a proper basis for finding that it was necessary to "counteract dumping which is causing injury". All of these provisions require a similar inherent real-time link between the imposition of the measure and the POI data, which were lacking in the BOPP Film investigation.

II.3. PAKISTAN FAILED TO CONCLUDE THE INVESTIGATION WITHIN 18 MONTHS IN VIOLATION OF ARTICLE 5.10 OF THE ANTI-DUMPING AGREEMENT

11. Pakistan acted inconsistently with Article 5.10 of the Anti-Dumping Agreement by failing to conclude the investigation within 18 months.

12. Article 5.10 requires that investigations are concluded within 12 months after initiation or, "in special circumstances", that investigations are concluded within 18 months. There are no other exceptions to this rule. The reason for this strict deadline is the need to provide security and predictability to trade in general and to potentially affected exporters in particular. Article 5.10 is not simply a procedural rule to be interpreted with some degree of flexibility, it is an essential safeguard to protect against abuse of the system.

13. The BOPP Film investigation was initiated on 23 April 2012, but was only concluded on 11 April 2015 – nearly three years later. Thus, as it took almost 36 months to conclude the investigation, Pakistan very clearly violated Article 5.10. There were also no "special circumstances" justifying the delay.

14. Pakistan argues that the final determination was made in February 2013, and that the subsequent determination in April 2015 was merely a "remand decision". In effect, Pakistan considers that the investigation was concluded just over 9 months after initiation, in keeping with Article 5.10. This argument, however, is contradicted by the facts on the record.

15. Indeed, the first determination in February 2013 was set aside by the local Appellate Tribunal on 23 January 2015 because the NTC was not properly constituted, which rendered the determination *coram non judice*. After the determination was set aside, the NTC issued a new final report and a new notice of final determination, imposing measures "with effect from" 11 April 2015. Thus, the April 2015 determination did not merely adjust or modify the February 2013 determination; it rendered the determination afresh, as the first determination was set aside. Even the local Appellate Tribunal confirmed this in a subsequent judgment, clarifying that the original determination was made in April 2015.

16. Alternatively, should the Panel be of the view that the investigation was concluded in February 2013, the UAE has presented an alternative claim. It is clear that the February determination was based on numerous investigative steps that followed the original initiation of the investigation on 27 September 2010, which pre-dated the initiation in April 2012. Thus, the 2013 determination could not have been made without the actions that pre-dated April 2012. Therefore, for all practical intents and purposes, the "investigation" was not concluded within 12 or even 18 months, as investigative steps leading to this "determination" were taken from 27 September 2010. The "investigation" took therefore over 28 months to conclude, which is in violation of Article 5.10.

II.4. PAKISTAN UNDULY REJECTED RELEVANT COST DATA THAT REASONABLY REFLECTED THE COST ASSOCIATED WITH THE PRODUCTION AND SALE OF THE PRODUCT UNDER INVESTIGATION IN VIOLATION OF ARTICLES 2.2, 2.2.1, 2.2.1.1, AND 2.2.2 OF THE ANTI-DUMPING AGREEMENT

17. Pakistan acted inconsistently with Articles 2.2, 2.2.1, 2.2.1.1, and 2.2.2 of the Anti-Dumping Agreement by unlawfully rejecting large volumes of the UAE exporter's domestic sales for not being in the ordinary course of trade based on cost data that were not specific to the domestic sales of the product under investigation.

18. Specifically, the NTC undertook an examination of whether the UAE exporter's domestic sales were made in the ordinary course of trade by relying on cost data that did not reasonably reflect the costs associated with the production and sale of the product under consideration. The NTC also used cost data for SG&A that were not based on actual data pertaining to the production and sale of the like product in the domestic market. The improper rejection of verifiable cost data resulted in the unwarranted finding that large volumes of domestic sales were not made in the ordinary course of trade, which, in turn, resulted in the erroneous establishment of normal value.

19. Indeed, the UAE exporter provided the cost data for domestic sales in response to a specific question in the questionnaire, namely section D-3. However, the NTC rejected this relevant cost

data and used instead more general cost data, as provided in response to section F of the questionnaire. The UAE exporter had explained that the data in section F included certain non-relevant costs for selling to markets other than the domestic market as well as certain holding-company costs. The UAE further described the UAE exporter's historically used cost-accounting system and allocation of costs, which show the significant differences in sales costs between different markets. Thus, the section F-data unquestionably included a large number of expenses that were clearly not specific to domestic sales and, for that reason alone, should not have been used for the ordinary-course-of-trade test.

20. Consequently, by using the wrong cost data for the ordinary-course-of-trade test, the NTC found a large volume of below-cost sales, which were excluded from the establishment of normal value. The normal value was instead based on a smaller universe of "profitable"/higher-priced domestic sales. The NTC never engaged with the relevant cost data provided in response to section D-3, nor provided any explanation why it rejected that specific data and relied on the more general section F-data. At no point did the NTC respond to the comments and follow-up information provided by the UAE exporter. Had the NTC used the specific cost for domestic sales in the UAE, the overall cost would have been much lower, which in turn would have resulted in the acceptance of many more domestic sales as being made in the ordinary course of trade. This would have ensured a proper establishment of the normal value and, in turn, a considerably lower dumping margin.

II.5. PAKISTAN FAILED TO MAKE DUE ALLOWANCE FOR DIFFERENCES IN LEVEL OF TRADE IN VIOLATION OF ARTICLE 2.4 OF THE ANTI-DUMPING AGREEMENT

21. Pakistan acted inconsistently with Article 2.4 of the Anti-Dumping Agreement because it failed to make due allowance for a difference in the level of trade and, thus, failed to ensure a fair comparison between the export price and the normal value.

22. Specifically, first, the UAE exporter provided, in no less than five submissions, evidence supporting the level-of-trade adjustment, including a breakdown of the costs incurred by distributors in Pakistan for which price reductions were given. Also a copy of an agreement with a Pakistani distributor was provided to the NTC that expressly provided for price "concessions" to account for the distributor's additional costs. Although the exact level of the adjustment could have been the subject of debate, given that different distributors may have different costs, there was no doubt that the NTC received a substantiated request for a level-of-trade adjustment. If the NTC wanted more evidence or additional clarifications, it should have engaged constructively with the UAE exporter in the required "dialogue" imposed by the last sentence of Article 2.4. It did not do so, however. Instead, it merely rejected the substantiated request for an adjustment, and therefore violated the last sentence of Article 2.4.

23. Second, the NTC's rejection of the adjustment because of an alleged failure to establish the actual expenses incurred by distributors in Pakistan imposed an unreasonable burden on the UAE exporter. The exporter did not have access to the records of unrelated companies in Pakistan and could not therefore provide documentary evidence of their actual expenses. The copy of the distribution agreement demonstrated, however, the arrangement for compensating distributors for their additional costs when selling the products in Pakistan. This was sufficient to establish that there was a price difference owing to different levels of trade between domestic and export sales, as no distributors were used in the UAE. The actual costs incurred for distributors in Pakistan were not necessary, nor was it reasonable to require such information, as that was not in the control of the UAE exporter.

24. Third, the NTC's justification for rejecting the adjustment was that the price concessions offered to distributors in Pakistan where somehow "different for different exporters". However, there was no basis for reading into Article 2.4 a requirement that an adjustment can only be made if the difference affecting price comparability is the same for all investigated exporters or for all domestic importers. Nor is the fact that the amounts of adjustment differ between investigated exporters a cause of concern sufficient to reject a substantiated request for adjustment. If, as was the case, it is demonstrated that granting price concessions to distributors for their additional costs of sales is an established industry practice, the investigating authority cannot simply reject the requested adjustment. There was no record evidence that contradicted the practice. The level of the price concessions themselves were not, however, standardized in the industry, but discretionary depending on the level of sales involved. This was shown in the written contract with a Pakistani distributor submitted to the NTC.

II.6. PAKISTAN FAILED TO PROPERLY CONSIDER THE VOLUME AND PRICE EFFECTS OF THE ALLEGED DUMPED IMPORTS IN VIOLATION OF ARTICLES 3.1 AND 3.2 OF THE ANTI-DUMPING AGREEMENT

25. Pakistan acted inconsistently with Articles 3.1 and 3.2 of the Anti-Dumping Agreement by failing to make an objective examination based on positive evidence of the volume and price effects of the allegedly dumped imports.

26. First, the NTC failed to undertake an objective examination of the volume of dumped imports. There was no dynamic examination of the import volumes, but only a static description of an increase in one year of the POI in isolation, ignoring the fact that in all other periods of the POI imports decreased both in absolute terms and relative to domestic production. There was a complete lack of an adequate and reasoned explanation supporting a finding of a significant increase in imports, since the NTC did not address the relevant trends over the POI, including that imports significantly decreased in the most recent period of the POI.

27. In fact, information disclosed by Pakistan in the course of the proceeding confirms the UAE's claim, as the NTC found that imports decreased during the last six months of the POI by more than they increased in 2009. However, none of these intervening trends and circumstances were addressed in the NTC's "analysis". Nor was a reasoned or adequate explanation provided of how the volume of imports can be said to have increased, let alone significantly.

28. Second, assuming there even could be a finding of increased imports (*quod non*), the NTC entirely failed to consider whether this increase was "significant". The Appellate Body has explained that a qualitative, contextual evaluation of the volume of dumped imports is required in order to conclude that an increase is "significant". However, there is nothing in the final determination suggesting that the NTC considered the significance of any alleged increase in imports, whether in quantitative or in qualitative terms. As noted, the decrease in 2010 was larger than the increase in 2009. In terms of imports relative to domestic production as well, imports decreased in 2010 to a level very similar to the start of the POI. Thus, by no means was there an obvious significant increase in imports in the POI, and no analysis was provided by the NTC.

29. Third, the NTC's price effects findings were similarly flawed, as the NTC failed to undertake an objective examination of the alleged significant price undercutting and price depression.

30. Regarding price undercutting, the finding was based on a comparison between prices of the like domestic product and the "landed costs" of the imports. The NTC stated that the "landed costs" were taken from official import statistics, but no explanation was provided why the submitted export price information was not used instead. The evidentiary basis for the determination was thus of doubtful reliability and did not meet the "positive evidence" standard of Article 3.1.

31. In addition, there was no information about which product types formed part of the price comparisons and whether any adjustment were made to ensure price comparability (other than exclusion of sales taxes). However, whenever prices are compared, *comparability* is an issue. In fact, both the UAE exporter and the domestic industry sold two types of BOPP Films in the POI (i.e. non-metallized and metallized grades), which for purposes of the dumping determination were treated separately. Record evidence also demonstrated that there were significant differences in import volumes and prices between non-metallized and metallized BOPP Film products. The Appellate Body in *Korea – Pneumatic Valves (Japan)* recently re-confirmed that a failure to ensure price comparability would be inconsistent with Article 3.1, as it would defeat the explanatory force that the dumped imports might have for the effect on domestic prices. Yet, nowhere in the final determination was there even the beginning of an acknowledgement of the different product types and whether the basket of imported products was comparable to the basket of domestic products. There was nothing in the record suggesting that the NTC took possible concerns over comparability into consideration when comparing the prices.

32. Moreover, the NTC's price-undercutting finding was not supported by a reasoned and adequate explanation in light of the different price trends and developments during the POI. In fact, the NTC based its finding on one year of the POI alone, as only in 2009 was the weighted average "landed cost" of the dumped imports lower than the domestic price. In 2007, in 2008, and again in the first six months of 2010, the dumped import "prices" were higher than the like domestic product prices. Thus, during most of the POI, the dumped imports were overselling the like domestic

products. In addition, where there was alleged underselling in 2009, it was by a relatively small margin, whereas the overselling in other periods were more significant. The record facts showed that the margin of undercutting in 2009 was very similar to the margin of overselling in 2010 and, thus, it was not at all clear on what basis the NTC made the bold assertion that the "magnitude of the price undercutting" was "overwhelming".

33. The Appellate Body has clarified that a failure to consider the development of the price trends over the entire POI and focusing only on an isolated event of the POI is inconsistent with the obligation in Article 3.2. A finding of price undercutting is not simply a question of whether there is "a mathematical difference" at any point in time during the POI, but requires a dynamic assessment of "how the prices interact over time". The NTC failed to do this, and thus acted inconsistently with Articles 3.1 and 3.2 of the ADA.

34. Regarding price depression, the finding was based on a simple "mathematical" price decrease in 2009 alone, which failed to take account of the other relevant trends and levels of price increases/decreases in the POI. Indeed, the domestic price fluctuated over the POI, but overall stayed significantly above their level in 2007. However, the NTC largely ignored these trends and failed to provide a reasoned and adequate explanation of why the finding could be based on 2009 alone. Thus it was completely unclear what was so "overwhelming" about the decrease in prices in 2009 that was entirely undone by the end of the POI when dumping was allegedly continuing. More was required of the NTC in terms of explanation to support the finding.

35. In addition, the NTC reduced the price *depression* requirement to a mere price *decrease* finding, entirely failing to establish the explanatory force of the dumped imports. There is no discussion of any kind that seeks to link the dumped imports with the alleged price decrease or that explains the price increases in 2010 when imports were allegedly being dumped. There is nothing in the report to reflect a consideration by the investigating authority of whether prices decreased as result of the allegedly dumped imports.

36. Moreover, the NTC acknowledged that the cost of goods sold dropped in 2009 and that "price depression was partly due to decrease in cost and partly due to dumping", but considered that prices decreased more than cost. However, there was no additional explanation of the extent to which the cost decreases can explain the price decreases. In fact, the cost decrease in 2009 tracked closely the decrease in prices. There was therefore a clear and direct relationship between the decrease in costs and the decrease in prices. To state, without explanation, that the price depression was "partly due to dumping" when the facts show a direct relationship between the decrease in costs and an equivalent decrease in prices does not comport with the requirement of an "objective examination" in line with Articles 3.1 and 3.2 of the Anti-Dumping Agreement.

37. Finally, there was no adequate and reasoned explanation by the NTC about the supposed *significance* of the alleged price depression. The NTC simply stated that the magnitude was "overwhelming", but did not support this statement with adequate explanation. Simply stating that something is "overwhelming" does not comport with the obligation to provide a reasoned and adequate explanation. As noted, the Appellate Body has explained that whether a price effect is "significant" necessarily requires a contextual consideration of the effect in light of all relevant facts and circumstances. However, the price decrease in 2009 was followed by an almost similar increase in the next six months, leaving prices almost at their highest level at the end of the POI, and overall increased over the POI. An objective examination of these facts does not support a finding of price depression, let alone one "to a significant degree".

II.7. PAKISTAN'S INJURY DETERMINATION WAS INCONSISTENT WITH ARTICLES 3.1 AND 3.4 OF THE ANTI-DUMPING AGREEMENT

38. Pakistan acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement by failing to make a material injury determination that involved an objective examination of positive evidence of all relevant factors having a bearing on the state of the domestic industry.

39. In particular, first, the NTC failed to examine all relevant factors in Article 3.4 that must be examined at a minimum in each investigation, as there was no evaluation of the "margin of dumping". This is squarely in violation of the obligation under Article 3.4 that requires an examination of each of the listed factors in terms of their role, relevance, and relative weight. If the NTC considered the factor not to be relevant, it should have included an explanation to this effect.

It did not do so. The only possible conclusion is that the NTC simply failed to consider, let alone evaluate, this factor in violation of Article 3.4. A mere listing of the margins of dumping somewhere in the investigative report does not constitute "evaluation" and, therefore, does not satisfy the obligation in Article 3.4. This has been confirmed in the jurisprudence.

40. In addition, the failure to examine this mandatory injury factor of Article 3.4 reveals a fundamental error in the NTC's injury analysis, as it reflects the failure to establish the explanatory force of the alleged dumped imports for the alleged injury to the domestic industry. Indeed, the factor "margin of dumping" is specifically listed in Article 3.4 and, therefore, forms an essential part of the holistic examination required by Articles 3.1 and 3.4 of the "consequent impact of the dumped imports on the domestic industry".

41. Second, Pakistan failed to evaluate properly the relevant injury factors in an objective manner that linked the injury developments to the dumped imports. The injury "analysis" was simply a descriptive and quantitative account of movements in certain injury factors, presented in a selective way. There was no demonstration that the imports had explanatory force for the alleged material injury of the domestic industry.

42. There were seven injury factors that formed the basis of the NTC's injury determination. A review of the NTC's factual findings of these factors reveals a picture that is quite different from the selective presentation in the final determination. For most of these factors, the changes were marginal and the NTC failed to examine whether the dumped imports had any explanatory force for these developments:

- For market share, the NTC based its finding on one year of the POI alone, failing to engage in a dynamic assessment of the intermediary changes and end-point to end-point changes during the POI. Taking account of the POI as a whole, there was very little movement in the market shares, but an *increase* in 2009 compared to 2007, followed by a further significant increase in 2010. In the last six months of the POI, the market share of dumped imports decreased significantly to half of what it was in the same period in 2009, while domestic producers increased their market share to its highest level of the entire POI. Without further explanation it is doubtful on what basis an objective authority can reach a conclusion that this factor reveals *material* injury. In any case, no explanation of any kind was provided to address the complexity of the record data.

- For sales, the NTC found *de minimis* declines in sales in 2009 and 2010, which hardly depicted an industry suffering *material* injury. The NTC did not demonstrate the explanatory force of the allegedly dumped imports for these minor declines in sales volumes. For example, domestic demand shrunk in 2010 by much more than the reduction in domestic sales, yet it did not consider this impact. Nor did the NTC consider the impact of the domestic industry's increased export sales and whether this success may have come at the expense of domestic sales. Nowhere did the NTC evaluate the significance of these facts, which undermined any explanatory force of the imports for the minor declines in sales.

- For profit, the NTC found that the domestic industry was profitable during the entire POI, but that profits "decreased" in 2009. It is highly questionable whether this slight decline in profits actually constituted *materia*l injury, as the ex-factory price remained substantially higher than the cost of goods sold – thus, the domestic industry enjoyed significant profit throughout the entire POI. There is also serious doubt about the accuracy of the profit data used for this finding, as the domestic producer's annual report stated increasing and much higher profits in the POI. In any event, any loss in profits in 2009 was much more likely explained by the reasons in the domestic producer's annual report, which made no mentioning of import competition, and the significant increase in employment and wage costs. These factors undermined the explanatory force of the imports for any reduction in profits.

- For productivity, the NTC found that it decreased in the POI, but did not actually make a finding of injury based on this decline. There was no analysis and explanation of any kind of this factor, and certainly none demonstrating the explanatory force of the allegedly dumped imports for the development in this factor. For example, productivity dropped in 2008 at a time *before* the dumping POI and when the domestic industry was allegedly performing very well. Rather, the drop in productivity was directly related to the significant increase in

employment of the domestic producer. Thus, there was a clear correlation between the number of employees and productivity, not with the dumped imports. Moreover, the significant increase in employees speaks of a domestic industry that was investing in production and not one suffering *material* injury.

- For salaries and wages, the NTC found that these increased over the POI and did not expressly state that the domestic industry suffered injury on account of this factor. There was no evaluation of the role and relevance of this factor for the determination on the consequent impact of the dumped imports on the state of the domestic industry. The NTC simply noted this development as a matter of fact. In fact, the increase in salaries were directly linked with the significantly increased employment. The data suggests that the employees hired were paid significantly higher salaries than previous staff, as the wage expense increased considerably although the work force increased only slightly. Moreover, it was wholly unexplained why this positive trend showing confidence in the business supported the material injury finding.

- For return on investment, the NTC found that it increased in 2009, but decreased in the first half of 2010 and on that basis concluded the domestic industry suffered material injury. The data shows the domestic industry enjoyed a healthy ROI during the POI, and the NTC's finding that ROI increased in 2009 contradicted its other findings of material injury in that year, thus requiring a further explanation. There was no evaluation of the explanatory force of the imports for this injury factor, and the data reflected in the report was even inconsistent with the same data from the verification report. The unexplained finding was simply not the result of an "objective examination" and a proper "evaluation".

- For cash flow, the NTC found that it "recovered" in 2009, but noted this was followed by a "significant decrease" in 2010, which was the basis for the material injury finding. In the "analysis", the NTC failed to acknowledge that the decline in cash flows was actually the most significant in 2008 (i.e. the year before the start of the dumping POI and the year that imports declined). The recovery in cash flow in 2009 was a full recovery back to the level at the start of the POI. The decline in 2010 was less significant than the decrease in 2008. An objective examination would have dynamically assessed these trends and explained why the smaller decline in 2010 supported a finding of material injury.

There was also no analysis about the explanatory force of the allegedly dumped imports for the domestic industry's cash flow. Comparing the different trends, it was clear that imports had no negative impact on cash flow (i.e. when cash flow declined significantly in 2008, imports actually decreased; similarly, when cash flow declined again in 2010, imports also declined). In the absence of a coincidence in time, the NTC would have had to provide an even more compelling explanation why this factor was explained by the imports. No explanation of any kind was provided by the NTC.

Moreover, the increase in cash flow in 2009 and decline in 2010 were not in line with the NTC's determination of material injury, which was based primarily on 2009. There is also considerable doubt as to the accuracy of this cash flow data since the domestic producer's annual reports show that its net cash flows increased considerably and consistently in 2009 through 2010. Thus, the NTC failed to undertake an objective examination of this factor.

43. Third, the NTC failed to make the requisite holistic determination of the overall position of the domestic industry. That is, all injury factors are to be taken into account and properly weighed, to reach an overall finding of injury. The NTC, however, cherry-picked only those factors supporting its material injury finding while, evidently, "zeroing" those that trended positively.

44. In particular, there were many positively trending injury factors, but the NTC ignored these factors in its injury finding. Given that almost half of the injury factors trended positively and, in light of the very minor negative developments in the other injury factors (assuming that NTC's findings of negative development of these factors were correct, *quod non*), it was required of the NTC to undertake such a holistic assessment. Indeed, an injury determination is not to be based on a few isolated factors. Article 3.4 clearly states that not one or several of the factors can "give decisive guidance" whether there is material injury. It is only the combined evaluation of all relevant factors that can provide the basis for such a determination. However, the NTC failed to undertake this required holistic evaluation.

45. Nor did the NTC provide a reasoned and adequate explanation of why, based on an evaluation of all fifteen factors, the situation was one of "material" injury. There is not even the beginning of an analysis in the final determination. Without further explanation it is doubtful on what basis an authority can reach a conclusion of *material* injury when the domestic industry's market share was consistently very high, sales were consistently high despite reduced consumption, significant investment was made into production capacity, and when ex-factory prices and production increased. A robust explanation was required of how there could be material injury in light of such positive injury trends. However, the NTC failed to do so.

II.8. PAKISTAN'S CAUSATION AND NON-ATTRIBUTION DETERMINATION WAS INCONSISTENT WITH ARTICLES 3.1 AND 3.5 OF THE ANTI-DUMPING AGREEMENT

46. The NTC's causation and non-attribution determination was inconsistent with Articles 3.1 and 3.5 of the Anti-Dumping Agreement.

47. First, the NTC's causation determination was undermined by the fact that it rested on the flawed evaluations of the volume and price effects of the dumped imports under Articles 3.1 and 3.2 and the flawed injury determination under Articles 3.1 and 3.4. The flaws in these analyses fatally undermined the causation determination under Article 3.5.

48. Second, the NTC failed to establish the required genuine and substantial relationship of cause and effect between the allegedly dumped imports and the injury to the domestic industry. The causation analysis was entirely premised on a few negative trends in injury factors, and failed to examine holistically the explanatory force and the coincidence in time of the dumped imports with the developments of all relevant factors. Indeed, there was no adequate and reasoned explanation supporting the causation determination in light of the totality of the evidence, including pertinent factors such as the consistently very significant market share of the domestic producer in the POI, its continued profitability, and the overall lack of negative effects in the last six months of the POI (i.e. decline in imports, increased domestic sales, improved productivity, and increased domestic price). These divergent trends, and the magnitude of the changes, disproved the existence of a genuine and substantial relationship of cause and effect.

49. The NTC's assertion of a "strong time correlation" between the allegedly dumped imports and the injury was simply unsupported by the facts on the record. The NTC focused on the performance indicators of market share, sales, and profitability, but these factors did not support the assertion that there was a correlation in time:

- In terms of market shares, the trend of dumped imports did not correlate with (i.e. exert explanatory force for) the trend in the domestic industry's market share. In fact, taking account of the entire development of the POI, there is overall very little movement in the domestic industry's market share. The market share was higher at end of the POI than at the start, even if in 2009 market share decreased slightly compared with 2008. Thus, compared with 2007, the market share of the domestic industry increased in 2009. Also, the last six months of the dumping POI showed a significant increase in the domestic industry's market share and an equally significant decrease in the market share of the allegedly dumped imports. Indeed, the market share of the allegedly dumped imports almost halved in the last period of the POI, while the domestic industry's increased to the highest level of the entire POI. All of this occurred during the time of the alleged dumping. There was no correlation in time and the NTC failed to provide a reasoned and adequate explanation of why, despite these contradictory trends, the causation determination was sound.

- In terms of domestic sales, the data showed that these were stable throughout the POI with only small variations in 2009 and 2010. These changes took place when domestic demand decreased, yet nowhere did the NTC evaluate the significance of the decline in sales in light of this fact. There was no credible basis to argue that correlation, much less causation, existed between the fluctuation in import volumes and the domestic industry's sales. The magnitude of changes in import volumes and domestic sales simply did not correlate. For example, whereas imports significantly decreased in 2008, domestic sales increased infinitesimally. Similarly, in 2009 when imports increased significantly, domestic sales' decline was *de minimis*, and in the first six months of 2010 when imports declined significantly, domestic sales decreased infinitesimally. There was no adequate and reasoned explanation by the NTC

that supported its finding of causation, as the record evidence suggested no genuine relationship of cause and effect.

In addition, to the extent that gross and net sales of the domestic industry slightly decreased, it could have been explained by an increase in export sales as opposed to imports. The NTC confirmed that the "export performance was better in 2009 and 2010", yet it did not consider whether some of this success may have come at the expense of domestic sales. The NTC also ignored record evidence that the domestic producer enumerated exhaustive reasons in its annual report attributing the reduction in sales in 2009 to specific factors, such as a deteriorating economy, electricity crisis, rupee devaluation, uncertain political situation, heightened security conditions, and cheap availability of smuggled goods. No mention was made of dumped imports as a cause of the alleged decrease in sales. The NTC failed to address these known "other factors", which undermined the explanatory force of the imports.

- In terms of profits, there was equally a lack of correlation, much less causation, between the level of imports and the domestic industry's profits. For example, in the first six months of 2010, when imports decreased significantly, the profitability of the domestic industry also declined. This fact calls into serious question whether the increase in profitability in 2008 and subsequent decrease in profits in 2009 could be explained by the alleged dumped imports. The NTC provided no adequate and reasoned explanation supporting its causation finding, and the record evidence indicated that there was a lack of causation between the imports and the domestic industry's profits. As noted before, any loss in profits during the POI for dumping, was much more likely explained by the reasons expressly provided by the domestic producer in its annual report, attributing the decline to: (a) the increase in raw material cost, which could not be fully passed on to the customers due to availability of smuggled film at cheaper rates; and (b) the increased financial costs as a result of higher mark-up rates and financing requirements. Thus, the increase in raw material and financial costs caused the slight decline in profit margins in 2009. In addition, in the dumping POI, the domestic industry markedly increased employment and wage costs, while prices and sales declined. These factors clearly weigh on the profitability of the domestic industry. The NTC did not address this pertinent record evidence demonstrating a lack of explanatory force of the dumped imports for the (slightly) reduced profits.

50. Third, in its non-attribution analysis, the NTC failed to separate and distinguish the effects of known other factors, including by not providing the requisite adequate and reasoned explanation of how it ensured that the injury caused by these other factors were not attributed to the dumped imports. This is true for the injury caused to the domestic industry by the financial crisis in 2009 as well as the specific factors listed in the domestic producer's 2009 annual report:

- With respect to the financial crisis, the entirety of the NTC's evaluation was confined to two short sentences in the final determination that "[i]t may be noted from Table XI that market share of BOPP Film reduced marginally but it increased during 2009. Hence this factor cannot be considered effecting domestic market". It is not clear what relevance the market share (or domestic demand, which was likely meant to be referred to) has for the purpose of separating and distinguishing the impact of the financial crisis. There was no evaluation of any kind of this other factor that was clearly raised by the interested parties.

- With respect to the factors raised by the domestic producer in its annual report, the NTC failed completely to mention, let alone evaluate, these as part of its non-attribution analysis. It was demonstrated that the domestic producer acknowledged that it suffered injury in 2009 because of specific factors other than the allegedly dumped imports (i.e. deteriorating economy, electricity crisis, rupee devaluation, uncertain political situation, heightened security conditions, and cheap availability of smuggled goods). Nowhere in the NTC's report were these known "other factors" evaluated. They were completed ignored, even though the domestic producer itself acknowledged their injurious impact, which the UAE exporter substantiated and placed on the investigation record.

51. In sum, the NTC failed to establish a genuine and substantial relationship of cause and effect between the alleged dumped imports and the injury to the domestic industry, including by failing to ensure that injury caused by other factors was not attributed to the dumped imports, as required by Articles 3.1 and 3.5.

II.9. PAKISTAN FAILED TO PROVIDE THE RESPONDENTS WITH THE OPPORTUNITY TO DEFEND THEIR INTERESTS IN VIOLATION OF ARTICLE 6.2 OF THE ANTI-DUMPING AGREEMENT

52. The NTC acted inconsistently with Article 6.2 of the Anti-Dumping Agreement by failing to provide the interested parties, including the UAE exporter, with the full opportunity to defend their interests.

53. Indeed, the UAE exporter and the other interested parties were not given an opportunity to defend their interests when the NTC in 2015 "re-considered, re-appreciated and re-appraised the facts of the investigation" that dated from five years earlier, including on material issues such as the lack of "positive" evidence for the dumping, injury, and causation findings, the selection of particular cost data for establishing normal value, and the refusal of making due allowance for a requested difference in the level of trade.

54. Article 6.2 imposes an obligation on investigating authorities to ensure that interested parties have the full opportunity to defend their interests throughout anti-dumping investigations. However, interested parties were denied such opportunity when the NTC made the final determination in April 2015 by ratifying earlier findings and analyses from 2013. In fact, there was no notice by the NTC that it would "re-consider" the facts of the 2013 investigation and, accordingly, no opportunity was provided to the interested parties to present arguments in defending their interests. Even if this 2015 "re-appraisal" was in fact a "remand" procedure (*quod non*), the NTC was required to give the interested parties an opportunity to participate in this remand process to defend their interests.

II.10. PAKISTAN'S CONTINUATION OF THE DUTIES WAS INCONSISTENT WITH ARTICLES 11.1 AND 11.3 OF THE ANTI-DUMPING AGREEMENT

55. Pakistan acted inconsistently with Articles 11.1 and 11.3 of the Anti-Dumping Agreement by extending the BOPP Film measure that never should have been imposed in the first place and by making a sunset review determination that was not supported by a sufficient factual basis.

56. Specifically, first, the anti-dumping measure was imposed based on an investigation that should never have been initiated and that resulted in a flawed determination lacking an appropriate basis for the imposition of duties. Given that the original measure was not consistent with the Anti-Dumping Agreement, the extension of the measure was necessarily inconsistent with the Agreement as well. In particular, the original determination was based on stale dumping and injury data that was not informative of the situation at the time of imposition of the duties. Given the missing real-time link between the data and the determination to impose duties, the extension of the measure violated Article 11.1 by maintaining it although there was no "dumping which is causing injury".

57. Second, the NTC's determination of a likelihood of continuation or recurrence of dumping and injury misapplied the "likelihood" standard, lacked a sufficient factual basis, and was based on an undue presumption in favor of maintaining the duties. The record evidence did not support a determination that dumping and injury would be "probable" if the duties expired, and there was no reasoned and adequate explanation supporting the NTC's contrary conclusion. For example, the NTC failed to provide a reasoned and adequate explanation of (i) how a domestic industry that had almost a monopoly position on the market in the period of review ("POR") was likely to suffer "material injury" if the duties expired; (ii) how dumped imports were responsible for the poor performance in certain injury factors of the domestic industry, which were due to its own making of more than doubling production capacity in the POR; and (iii) how there was a sufficient factual record for the likelihood-of-dumping determination when the price of allegedly dumped imports had more than doubled and significantly oversold like domestic products. The failure to address these facts, and others, called into question the consistency of the NTC's finding with Article 11.3 of the Anti-Dumping Agreement.

58. Third, the sunset review determination was based on a likelihood-of-dumping finding that did not comply with the disciplines of Article 2 of the Anti-Dumping Agreement. For example, the NTC unduly rejected the UAE exporter's relevant cost data on the product under review and instead constructed the normal value based on "cost[s] to make and sell" for BOPP Film sold to other markets, which was compared to a constructed landed cost based on official customs data. No explanation was provided why the use of this data was appropriate to calculate dumping margins,

seeing that the UAE exporter responded in full to the expiry review questionnaire and, therefore, provided the relevant data on domestic and export sales of the product under review.

59. Even if construction of normal value was justified (*quod non*), there was no apparent attempt by the NTC to ensure that the "costs to make and sell" were adjusted to those for the product under review, as sold in the UAE and not for other markets. The NTC had record information from the original investigation that heightened sales costs were incurred by the UAE exporter for sales of BOPP Film to certain third markets, and that these were not incurred for sales in the UAE or for export sales to Pakistan. An objective examination would have had to ensure that suitable costs were used for determining the normal value, reflecting the costs in the country of origin and reasonably reflecting the costs associated with the production and sale of the product under review, as required by Articles 2.2 and 2.2.1.1.

60. In addition, there was no explanation why the customs data was suitable to calculate the export price, rather than the specific data provided by the UAE exporter on its volume and value of exports to Pakistan in the POR. Nor did the NTC explain how the comparison between official customs data and the constructed normal value ensured a "fair comparison". Indeed, the NTC made no adjustments to these prices when making the comparison, other than deducting freight and handling costs of the export price.

61. Moreover, the other factors considered by the NTC did not support a likelihood-of- dumping finding. For example, the NTC found that export trends to other markets remained the same, which indicated that the duties in Pakistan had no impact on export trends and, therefore, there was no basis to consider major shifts back towards the Pakistan market if duties were terminated. The NTC also found that there was "export surplus" in the investigated exporting countries, which was taken as an indication of likelihood of continuation or recurrence of dumping. However, the data used for this finding was "broadly categorized" and not available for the BOPP Film specifically – thus the finding lacked a sufficient factual basis and adequate and reasoned explanations. Further, in relation to "export surplus", the NTC relied on a statement from the UAE exporter's website that its installed production capacity had increased, but the statement did not relate to the POR, but from the exporter's "inception" in 2006. Thus, this information did not constitute "positive evidence" and offered no factual basis for the likelihood-of-dumping finding.

62. Fourth, the likelihood-of-injury determination failed to comply with Article 11.3, as it was not based on a sufficient factual basis, nor involved an objective examination of positive evidence. Only 7 out of 15 factors were considered to reflect injury and, for each one, the NTC failed to examine properly the trends over the POR and the explanatory force of the dumped imports in the light of other explanations. The NTC also failed to make the requisite holistic determination of the state of the domestic industry, as it failed to take into account and properly weigh all factors in order to reach an overall finding of "material injury".

63. Specifically, for the "evaluation" of likely volume and price effects, and the developments in selected injury factors, the NTC limited itself to a mathematical description of certain injury trends, but failed to consider the situation holistically as well as alternative interpretations of the data. It did not explain through a forward-looking analysis why the developments that it was assuming to take place were "probable" and not just possible or plausible. For example:

- In terms of likely <u>volume</u> of dumped imports, the NTC found that imports declined and domestic production increased during the POR and, on that basis, concluded that imports were likely to increase again if duties were terminated and that that would lead to a reduction in production. However, there was no basis for this assertion. It was simply that, an assertion not supported by any facts or analysis. It is *possible*, but there was no analysis that confirmed that this was also *probable* based on the facts on the record. There was no forward-looking analysis of any kind that would allow the drawing of reasoned conclusions;

- In terms of likely <u>price effects</u>, the same lack of factual basis is evident. The facts showed that during the POR there was no price undercutting and no price depression. However, and without any explanation, the NTC considered that if imports want to regain market share they would do so by lowering prices – thus undercutting and depressing domestic prices. This is simply a baseless assumption not supported by any facts or any analysis. It is the kind of "analysis" that puts exporters in an impossible catch-22 situation: if the prices are

low, the conclusion will be of price undercutting and depression continuing and thus the need to maintain the duties; and if prices are high, as was the case here, the conclusion is that if duties are terminated, prices will go down and therefore duties must be maintained. These result-driven assumptions were neither "objective" nor supported by any factual basis. The NTC assumed certain price developments as possible, but failed to demonstrate through a forward-looking analysis that these developments were probable;

- In terms of the likely development in injury factors, the same picture emerges. Every *positive* development risks being undermined by renewed import competition – thus justifying the need to maintain duties, and every *negative* development poses a risk of further deteriorating that also justifies maintaining the duties. An exporter can never win. That is not an objective examination, but a biased approach based on unsubstantiated assumptions. Nor is there any forward-looking analysis in terms of the probability that these factors will trend negatively following the termination of the duties:

    - In terms of the market share, the NTC found that the domestic producer's market share increased to a near monopoly situation on the market during the POR. It considered that the market share of imports was likely to increase if the duties were terminated and that this would "affect adversely to the market share" of the domestic industry. Again, there was no analysis to support this point. It is possible; but whether it is in fact probable, was not addressed by the NTC. The NTC failed to determine objectively the probability that recurrence of material injury was likely given the fact that the domestic industry enjoyed close to a monopoly position in the market. It simply assumed that any decrease, loss of market share, or sales from import competition immediately implied that a domestic industry would be suffering material injury. That is not a correct approach to the concept of "injury". The notion of "material injury" refers to an "important" or "significant" overall impairment in the position of the domestic industry, and not simply the possibility of a minor drop in market share from a monopoly position. The NTC never even began to "evaluate" whether the factors examined supported the "overall impairment" finding.

    - In terms of installed capacity, production, and capacity utilization, the domestic industry had full utilization at the time duties were imposed. Clearly, the industry was not in a state of injury at that time and was not likely to go into a state of injury if duties were removed. During the POR, it more than doubled capacity in a market that had been shrinking at the end of the original POI. Any problems that the domestic producer had was thus of its own making. Despite a near monopoly position during the POR and despite the fact that prices increased significantly, the industry operated at a loss during the POR. It was not credible to suggest that there was a sufficient factual basis for maintaining the duties in this situation. Clearly, the domestic industry over-invested in increasing capacity. The alleged continuation or recurrence of injury was, if anything, self-inflicted. Thus, the NTC failed to provide a reasoned and adequate explanation supporting its determination.

64. There was also no attempt to explain why or how the allegedly dumped imports would be able to have explanatory force with respect to the factors that were expected to trend negatively if the anti-dumping measure expired. Indeed, many of these factors already trended negatively in the POR and were thus clearly unrelated to the alleged dumped imports.

II.11. PAKISTAN FAILED TO CONCLUDE THE SUNSET REVIEW WITHIN 12 MONTHS IN VIOLATION OF ARTICLE 11.4 OF THE ANTI-DUMPING AGREEMENT

65. Pakistan acted inconsistently with Article 11.4 of the Anti-Dumping Agreement by failing to carry out the sunset review "expeditiously" and to conclude the review "within 12 months of the date of initiation", without offering any explanations of "abnormal" circumstances that could warrant the delay.

66. First, it is undisputed that the sunset review was initiated on 4 August 2015 and only concluded on 28 November 2016 with the related public notice issued on 1 December 2016, which represents a period of 15 months. Undeniably, the sunset review was not carried out "expeditiously" (i.e. in a speedy manner, rapidly), thus violating Article 11.4.

67. Second, the NTC failed to provide any explanation of "abnormal" circumstances that could have warranted the delay beyond the normal 12 months period. The NTC simply referred to the High Court ruling of 15 March 2016 and noted that the Commission became "functional with effect from September 5, 2016" after it had resolved an internal problem of improper constitution. No explanation was provided why these internal problems constituted "abnormal" circumstances that could have justified the derogation from the rule in Article 11.4. The suggestion that the court ruling generated a systemic issue that affected every single investigation before the NTC was also unsubstantiated. It rather seemed that it was the NTC's own decision to suspend its work when it did and it was not required to do so by the court ruling concerning an entirely different investigation.

68. In any case, the UAE submits that this explanation was not adequate since internal administrative issues are not in principle reasons constituting "exceptional" or "abnormal" circumstances that could justify delaying the conclusion of a sunset review beyond 12 months. Internal administrative concerns are potentially the reason why the 12 month deadline is not met. That may explain the violation, but cannot justify it. Maybe the new government budget needs to be approved and for political reasons that is not happening meaning that the authority is short of staff and cannot conclude the review in 12 months but takes 20 months to do so. This is understandable, but it does not justify the delay under Article 11.4. These are two very different things.

69. The obligation to carry out a review investigation expeditiously is an important obligation that protects the essential interests and due process rights of interested parties, seeing that duties will remain in force pending the outcome of the sunset review. The 12-month deadline to conclude a sunset review is a fundamental safeguard against unduly extending the application of anti-dumping measures. Only in very abnormal situations can a derogation be justified. For sure, internal administrative reasons do not justify breaching the Article 11.4 obligation. The Appellate Body has confirmed that a WTO Member's domestic law does not excuse a Member from fulfilling its international obligations.

70. Finally, even assuming that such internal administrative reasons could be relevant (*quod non*), the circumstances referred to by the NTC (i.e. the High Court's ruling that the NTC was not properly constituted) are not "extra-ordinary" in any way. In fact, the same problem of the proper constitution of the NTC was already identified in 2011 and in 2013 in the context of this BOPP Film proceeding alone. Given the repeated nature of this concern, it can hardly be qualified as an extraordinary circumstance. Nor can it be said that the delay was in any way caused by practical issues, such as the exporters asking for more time to respond to questionnaires, etc.

II.12. PAKISTAN FAILED TO PROVIDE IN SUFFICIENT DETAIL THE FINDINGS AND CONCLUSIONS ON ISSUES OF FACT AND LAW CONSIDERED MATERIAL IN VIOLATION OF ARTICLES 12.1, 12.2, AND 12.3 OF THE ANTI-DUMPING AGREEMENT

71. Pakistan acted inconsistently with Articles 12.1, 12.2, and 12.3 of the Anti-Dumping Agreement by failing to provide adequate information in the notices of initiation and final determination of the original investigation and of the sunset review. In addition, Pakistan failed to provide public notices in sufficient detail about the findings and conclusions reached on all issues of fact and law that were considered material, as well as all relevant information on the matters of fact and law and reasons which led to the imposition of the final measures and the continuation of the duties as a result of the sunset review.

72. First, the notice of initiation of the investigation of 23 April 2012, which led to the imposition of the anti-dumping duties subject to this dispute, did not comport with the requirements in Article 12.1 as no information was provided about "the basis on which dumping is alleged in the application".

73. Second, the notice of the Final Determination failed to meet the standard of Article 12.2 to provide all relevant information in sufficient detail. The NTC failed to disclose essential information in sufficient detail concerning the dumping calculation, such as the rejection of the level-of-trade adjustment, and the rejection of large volumes of Taghleef's domestic sales as not in the ordinary course of trade because of the use of cost data that did not concern the product under investigation.

74. Third, the notice of the conclusion of the sunset review also failed to meet the standard in Article 12.2 to provide all relevant information for the determination. It merely states that the

requirements for extending the anti-dumping measure were met without any explanation of the probable nature of continuation or recurrence of dumping and injury if the duties were to expire, especially no explanation why the domestic industry would suffer "material injury" in light of its very significant market share and overall healthy position. Nor does the sunset review determination disclose the requisite degree of information supporting the likelihood determination.

II.13. PAKISTAN ACTED INCONSISTENTLY WITH ARTICLES 1 AND 18.1 OF THE ANTI-DUMPING AGREEMENT, AND ARTICLES VI:1 AND VI:2 OF THE GATT 1994

75. Pakistan's imposition of definitive anti-dumping duties on BOPP Film from the UAE and the continued extension of such duties following the sunset review determination were inconsistent with Articles 1 and 18 of the Anti-Dumping Agreement, as well as Articles VI:1 and VI:2 of the GATT 1994.

76. Specifically, Pakistan's anti-dumping measure violates Articles 1 and 18.1 of the Anti-Dumping Agreement because it was imposed pursuant to an investigation that was not initiated or conducted in accordance with the disciplines in the Anti-Dumping Agreement, and the extension of the measure was also inconsistent with relevant obligations of Pakistan. In addition, the anti-dumping measure is inconsistent with Articles VI of the GATT 1994 because the normal value was not properly established and there was no basis for the injury and causation determination.

III. CONCLUSION

77. Given the exceptional and pervasive nature of the violations that vitiated the BOPP Film investigation *ab initio* and led to duties being collected without any proper basis in the data, the UAE requests, in line with Members' domestic practice and prior GATT practice, that the Panel suggest the revocation of the BOPP Film measure and the refund of the duties unduly collected.

78. Indeed, the multiple violations by Pakistan are of a fundamental and pervasive nature and vitiate the initiation decision as well as the basis on which the determinations of dumping and injury were taken. The facts and violations involved in this dispute warrant a suggestion that Pakistan withdraws the measure. This is one of those disputes where this suggestion is justified, as panels in prior disputes have suggested the termination of measures for similar reasons.

79. In addition, given the length of time that imports of BOPP Film from the UAE have been affected by the measures and given that duties have been unduly collected for more than seven years, the UAE considers that the Panel should suggest that Pakistan refund the duties collected pursuant to these WTO-inconsistent measures. There is nothing extraordinary about refunding duties that have been unduly collected. Article 9.3 of the Anti-Dumping Agreement requires the prompt refund of unduly collected duties, and most Members have such a refund system in place in their national systems. In the days of the GATT dispute settlement system, it was not uncommon for panels to suggest the refund of unduly collected duties. Several GATT panels relating to anti-dumping measures recommended such refunds.

80. The UAE is not seeking a retroactive remedy, but is merely requesting that, as part of bringing its measure into conformity and to ensure that the dispute settlement mechanism is effective in ensuring compliance with the WTO rules, the Panel suggests that Pakistan refund the duties collected.

ANNEX B-2

INTEGRATED EXECUTIVE SUMMARY OF
THE ARGUMENTS OF PAKISTAN

1 INTRODUCTION

1.1. In this dispute, the United Arab Emirates (UAE) challenges anti-dumping determinations by the National Tariff Commission (NTC) of Pakistan. These anti-dumping determinations concern imports of biaxially oriented polypropylene (BOPP) film from, *inter alia*, the UAE. Pakistan respectfully requests the Panel to reject the UAE's claims in their entirety.

2 LEGAL ARGUMENTS

2.1 The Panel should reject the UAE's claims under Articles 5.2, 5.3 and, 5.8 of the Anti-Dumping Agreement

2.1. The NTC initiated the investigation on 27 September 2010.[1] The initiation was challenged before a Pakistani court under Pakistani law. The court subsequently ruled that the NTC had initiated the investigation at a time when it was not fully validly composed. On 10 March 2012, the Islamabad High Court ruled that the (now properly constituted) NTC could proceed with the "complaint before it". On 23 April 2012, the NTC re-initiated the investigation, on the basis of the original application and certain additional information collected by the NTC during the originally-initiated investigation.

2.2. The UAE alleges that the temporal gap between the end of the evidentiary period and the date of (re)initiation in 2012 gives rise to a violation of Articles 5.2, 5.3, and 5.8 of the Anti-Dumping Agreement.

2.3. With respect to the UAE's claims under Articles 5.2 and 5.8, these two provisions do not address the UAE's concern, which revolves around the temporal dimension of the evidence. However, Article 5.2 speaks only to the substantive suitability of the evidence and not to its temporal dimension. Moreover, the UAE erroneously relies on the phrase "reasonably available to the applicant". This phrase is not a basis for finding violations of Article 5.2, but *rather limits the scope of the provision*. Article 5.2 is not violated in circumstances where evidence that exists, but is not reasonably available to the applicant, was not filed to or was not considered by the investigating authority. For its part, Article 5.8 (as argued by the UAE) is purely consequential.

2.4. With respect to Article 5.3, multiple factors must be considered in determining whether a "gap" between the end of the evidentiary period and the initiation decision vitiates the initiation decision. These factors go well beyond merely the mechanical counting of months, as the UAE does.[2] First, the length of the temporal gap must be seen in the light of the standard applicable more generally to the evidence required for initiation. That standard is less demanding than the standard for the evidence required for the preliminary and final determinations. This is because the very purpose of an investigation is to gather evidence and to make determinations grounded in that more extensive evidence, whereas the purpose of an initiation decision is to determine whether there are sufficient reasons to engage in a further investigation.[3] This differentiated evidentiary standard should also apply to the temporal dimension of the evidence considered by the investigating authority.

2.5. Other factors that should be considered by a WTO Panel include for instance any constraints faced by an investigating authority under domestic law. In this case, the Panel should take into account the verdict of the Islamabad High Court that obliged the NTC to re-initiate the investigation without collecting further evidence.[4] Put differently, the NTC was *prevented* by Pakistani law from

[1] 2010 Notice of Initiation. Exhibit PAK-3.
[2] See for instance Pakistan's first written submission, para. 3.59.
[3] Pakistan's first written submission, paras. 3.60-3.61.
[4] See for instance Pakistan's first written submission, para. 3.68.

collecting new evidence and analyzing whether an investigation should be initiated on the basis of that evidence.

2.6. In assessing the WTO-consistency of the "gap", the Panel should also compare the present "gap" with the "gap" that will naturally occur between the end of any POI and the date of the final determination.[5] Depending on the circumstances, that gap can be significantly longer than the gap in this case between the evidentiary period and the date of initiation. This suggests that a decision based on evidence with those temporary characteristics cannot be considered *a priori* to be outdated. If the UAE is right and the "gap" in this case, simply by virtue of its length, is WTO-inconsistent, then so is potentially any dumping determination. Moreover, in this respect, the Panel should also take into account the administrative reality and the resulting challenges in resource-constrained developing countries.[6]

2.7. Existing case law supports Pakistan's argument that the mere length of the "gap" is not decisive. In previous cases that dealt with "gaps" of this kind in the context of a final determination, the mere duration of the "gap", considered on its own, was not considered a sufficient basis for finding a WTO inconsistency. Rather, additional factors such as those described above must be analyzed.[7] This must also apply to analyzing a "gap" in the context of an initiation decision, especially as the evidentiary requirements for an initiation decision are lower than those on a final determination.

2.8. For the above reasons, Pakistan requests the Panel to reject the UAE's claims under Articles 5.2, 5.3, and 5.8 of the Anti-Dumping Agreement.

2.2 The Panel should reject the UAE's claims under Articles 2.1, 3.1, 3.2, 3.4, 3.5, 9.1, 9.3, and 11.1 of the Anti-Dumping Agreement

2.9. The Panel should reject the UAE's arguments that the NTC's final determination was inconsistent with Articles 2.1, 3.1, 3.2, 3.4, 3.5, 9.1, 9.3, and 11.1 of the Anti-Dumping Agreement. The UAE asserts that the gap between the end of the period of investigation (POI) (mid-2010) and the date of the final determination (February 2013) was too long. This claim is closely related to the UAE's claims under Articles 5.2, 5.3 and 5.8, concerning the gap between the end of the POI and the initiation decision. In a nutshell, the UAE argues that what it considers to be outdated evidence cannot provide a sufficiently reliable evidentiary basis for a final dumping and injury determination.

2.10. As with the UAE's "gap" claim in the initiation context, Pakistan submits that the mere duration of this gap is not decisive for consistency with any of the provisions quoted by the UAE. Rather, as the Appellate Body found in *Mexico – Anti-Dumping Measures on Rice*, the duration of the gap has to be considered as one of multiple factors, all of which have to be considered holistically. This is because factors unrelated to the "gap" can counteract, or offset, concerns that arise from the use of older data.[8]

2.11. The factors to be considered include criteria such as whether the investigating authority simply accepted a POI that was proposed by the applicant or whether instead it had been established that updating the information was not possible.[9] In this context, the decision of the Islamabad High Court is a highly relevant factor that the Panel should take into account. Recall that the NTC decided to re-initiate the investigation on the basis of the original evidence, updated by data for the additional January – June 2010 period. It was the NTC's obligation under Pakistani law to proceed in accordance with the instructions of the Islamabad High Court. This was therefore in no way indicative of a passive approach, nor was it arbitrary or capricious, as may have been the case in other WTO disputes. Contrary to what the UAE argues, Pakistan is not relying on domestic law in order to justify a WTO violation. No violation of WTO law has been found to exist so far. Thus, Pakistan is not relying on domestic law as an affirmative defense, as if domestic law were akin to an Article XX of the GATT 1994 defense. Rather, Pakistan is relying on Pakistani law, and on the NTC's obligation to

[5] See for instance Pakistan's first written submission, para. 3.63.
[6] Pakistan's first written submission, para. 3.63.
[7] Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice*, para. 167.
[8] Pakistan's first written submission, para. 3.81.
[9] Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice*, para. 167.

follow the High Court's instruction, *as a factual circumstance that is a factor in assessing WTO compliance in the first place*.

2.12. The impact of the length of the gap should also be weighed against the ability of the NTC to conclude the investigation in a speedier manner. The ability of an investigating authority to build on previous analyses of data and to reach a speedier conclusion to an investigation than it would with entirely new evidence should be a valid consideration under the multi-factor approach taken by the Appellate Body.

2.13. Moreover, if the Panel were to agree that the NTC's *initiation* decision was not vitiated by the "gap" between the end of the evidentiary period and the date of the initiation decision, this should also militate in favour of the WTO-consistency of the gap with respect to the final determination.[10] If the "gap" between the end of the evidentiary period in June 2010 and the (re)initiation decision in April 2012 was not WTO-inconsistent, it makes little sense to rely on that same end of the evidentiary period in June 2010 to invalidate the final determination, given that the final determination was issued well within the maximum time period for investigations, pursuant to Article 5.10.

2.14. Otherwise, an investigating authority would be entitled to rely on slightly dated evidence to *initiate* an investigation, but that very same slightly dated character of the evidence would suddenly trigger a violation in the context of a *final determination*. This would make little sense. The drafters of the Anti-Dumping Agreement cannot have envisaged a situation where the evidence underpinning a perfectly WTO-consistent initiation decision would later vitiate a final determination on the ground that the evidence was too old.

2.15. Finally, unlike the Mexican authority in *Mexico – Anti-Dumping Measures on Rice*, the NTC actively sought to update the information underpinning the initiation request and defined the POI as including six additional months beyond the information originally submitted by the applicant. Thus, the NTC did not passively accept an evidentiary period proposed by the applicant, but rather sought to define a POI independently of the applicant's preferences.[11]

2.16. For all of the above reasons, Pakistan requests the Panel to reject the UAE's "gap" claim under Articles 2.1, 3.1, 3.2, 3.4, 3.5, 9.1, 9.3, and 11.1 of the Anti-Dumping Agreement.

2.3 The Panel should reject the UAE's claim under Article 5.10 of the Anti-Dumping Agreement

2.17. The UAE argues that the NTC acted inconsistently with the 12/18-month time limit under Article 5.10. The UAE's claim is based on the incorrect view that the NTC's investigation terminated not in February 2013, but in April 2015.

2.18. This is incorrect. The NTC issued a Notice of Final Determination in February 2013, imposed definitive duties, closed the file, and conducted no further work on this matter. Following the issuance of the final determination in February 2013, Taghleef initiated a domestic court challenge to that determination. The court challenge led to a reversal of the final determination in January 2015 and a subsequent remand procedure by the NTC. That remand procedure was terminated in April 2015, resulting in a confirmation by the NTC of the final determination in its original form, without any substantive changes.

2.19. According to the UAE, the remand procedure triggered by the January 2015 court decision should be regarded as an extension, or continuation, of the – previously terminated - original investigation. Based on this incorrect proposition, the UAE argues that because the end of the remand procedure in April 2015 occurred more than 18 months after the initiation of the investigation in April 2012, Article 5.10 was violated.

2.20. The UAE's claim cannot stand. It makes no sense at all to argue that an original investigation was concluded and a final determination was issued, but that subsequently – years later – that very same original investigation suddenly came back to life and continued, merely because a domestic

[10] Pakistan's first written submission, para. 3.92.
[11] Pakistan's first written submission, para. 3.91.

court remanded the determination back to the investigating authority. For obvious reasons, a remand procedure resulting from a domestic court challenge to a determination is not part of the original investigation. Therefore, the duration of a remand procedure cannot be part of an assessment whether the duration of an investigation was consistent with the Article 5.10 deadline. If that were the case, no Member could comply with the Article 5.10 deadline, because it is unlikely in the extreme that an original investigation, a subsequent court challenge, and a subsequent remand procedure would "fit" within the maximum 18-month deadline under Article 5.10.

2.21. As the investigation was terminated, with a final determination, within the 18-month deadline, Article 5.10 was not violated. This does not change when the determination is subsequently challenged before a court and results in a remand procedure. Pakistan notes that all third parties that have expressed a view on this issue universally reject the UAE's reading of Article 5.10 and its application to the facts of this case.[12]

2.22. The UAE claims that "what happened in this case was [not] a simple remand procedure and that the NTC "proceeded with making the original determination in 2015".[13] Pakistan does not understand why the Court's decision to remand the matter back to the NTC should mean that the NTC's subsequent decision reflected "the original determination". In essence, the UAE would have the NTC's remand decision mean that the investigation initiated in April 2012 – an investigation that, in reality, concluded with a Notice of Final Determination in February 2013 – should suddenly be deemed to have concluded much later in April 2015. This makes no sense.

2.23. The UAE itself admits that a remand process does not re-activate, retrospectively, an already concluded investigation. If that so, the date of the final determination (February 2013) is still the relevant final date. It cannot be that April 2015 becomes the relevant date for purposes of Article 5.10. And yet, this is what the UAE postulates.

2.24. The UAE seems to make an analogy of sorts between the events in early 2015, on the one hand, and the NTC's re-initiation decision in April 2012, on the other hand.[14] The thrust of the UAE's argument appears to be that, because the Court judgment of March 2012 and the subsequent NTC's (re)initiation decision in April 2012 "restarted the clock" of the investigation, the April 2015 remand procedure should also, by analogy, be deemed to have "restarted the clock" on the investigation.[15]

2.25. But this argument makes no sense because the two situations are not comparable. In 2012, the Islamabad High Court reversed the 2010 initiation decision (which was not a final determination) and the NTC took a (re)initiation decision. At that point, there had not yet been either a preliminary or final substantive determination. In this context, it makes perfect sense to speak of a "clock" that starts "ticking again", in terms of Article 5.10, because the NTC re-initiated the investigation.

2.26. In contrast, in 2015, the Anti-Dumping Appellate Tribunal reversed a final determination in an already concluded investigation, in which a final determination had been issued. It then fell upon the NTC to decide whether it should ratify the previous decision or, alternatively, modify its final determination. This was a *remand* regarding a completed investigation, not a continuation of an existing investigation. In this regard, it does not make sense to speak of a "clock" that would start "ticking again" on an investigation, because no investigation was being (re-) initiated.

2.27. Pakistan fully accepts that the substance of a remand decision must be challengeable in the WTO dispute settlement system and must also remain challengeable in a domestic court system under Article 13 of the Anti-Dumping Agreement. The substantive and due process rights of both interested parties and other WTO Member governments remain fully protected even in a remand procedure. However, the need to protect the substantive and due process rights of investigated companies and other WTO Members does not require a highly implausible reading of a provision like Article 5.10, which, by its express terms, pertains only to the maximum duration of *original investigations*.

2.28. Finally, the UAE also makes an alternative claim of violation of Article 5.10. Under this claim, the date of initiation is shifted back in time from April 2012 to September 2010, and the date of

[12] See United States' third-party submission, paras 2-7. EU's third-party submission, paras. 3–9.
[13] UAE's opening statement at the first substantive meeting, para. 42.
[14] UAE's opening statement at the first substantive meeting, para. 41.
[15] UAE's opening statement at the first substantive meeting, para. 41.

conclusion of the investigation is shifted back from April 2015 to February 2013. With this new "choice" of the relevant dates, the investigation stretched over 29 months and would, under the UAE's approach, violate Article 5.10.

2.29. The UAE's alternative claim lacks credibility. It is tantamount to saying that, if the Panel gives no credence to the UAE's primary claim, the Panel should move the goalposts and place them in an entirely new and arbitrary location that is convenient for the UAE. In any event, under Pakistani law, the starting date for the investigation at issue is clearly April 2012, not September 2010. This is a fact of Pakistani law. The investigation that was initiated in September 2010 was abandoned and was replaced with the re-initiated investigation, starting from April 2012. The UAE cannot simply assume away objective facts under Pakistani law, merely to develop a set of artificial assumptions under which, conveniently for the UAE, the Article 5.10 deadline would be exceeded.

2.30. Moreover, the UAE does not explain why the Panel should assume that the initiation date was September 2010 simply on the basis of the UAE's position that the final determination occurred in February 2013, rather than in April 2015. Pakistan fails to understand why the Panel, if it were to (rightly) reject April 2015 as the date of the final determination and instead (rightly) view February 2013 as the date of final determination, should *for this reason also* assume a different *initiation* date.

2.31. All of these elements demonstrate that the UAE's claim reflects an arbitrary game with dates that is not based on the realities of either Pakistani or WTO law. Based on the above, Pakistan requests the Panel to reject the UAE's claim under Article 5.10 of the Anti-Dumping Agreement.

2.4 The Panel should reject the UAE's claims under Articles 2.2, 2.2.1, 2.2.1.1, and 2.2.2 of the Anti-Dumping Agreement

2.32. The UAE's claim concerning Taghleef's cost of production (COP) revolves around the assertion that the NTC was not entitled to use the COP as reported by Taghleef, in the corresponding cost-related section of the NTC's export questionnaire (referred to by the parties as the "Appendix 2 data"), but rather should have used an unexplained, aggregate COP figure provided in Taghleef's domestic sales data base (referred to by the parties as the "Appendix D-3 data"). Pakistan submits that the NTC was within the bounds of its discretion to determine that the Appendix 2 data was by far the more plausible and reliable data in terms of reflecting the actual costs of production of the investigated product. The NTC made its "judgment call" on grounds that, by any objective standard, were reasonable, plausible and grounded in the objective characteristics of the evidence before it.

2.33. In its Questionnaire Response, in the section dedicated to cost data, Taghleef reported a complete and detailed set of COP figures, broken down into its constituent parts (raw material and labour costs, overhead, etc.) and, subsequently, informed the NTC that these figures reflected the company's audited financial statements and related to the per-unit cost of the product under consideration. This is the Appendix 2 data. At the same time, Taghleef reported a different, aggregate and unexplained COP figure (not broken down into its components), in the last column of the domestic sales database that varied on a quarterly basis. This was the Appendix D-3 data. Immediately after receiving Taghleef's Questionnaire Response, the NTC requested clarifications from Taghleef, requesting the company to report its COP data separately for its domestic and export sales, respectively, and to do so on a quarterly basis. Taghleef responded by providing its Appendix 2 data on a quarterly basis. Importantly, Taghleef did not submit a disaggregation of the COP data into domestic and export sales until the very last moments of the investigation, in late December 2012.

2.34. The December 2012 submission listed separate COP figures for domestic sales, for sales on the Pakistani market, and for sales on all other export markets. The reasons given for the variation between the COP figures were highly implausible. First, the different COP figures were based on a different allocation of a number of cost categories that went far beyond Taghleef's initial assertions, which revolved only around selling and marketing costs. In contrast, the December 2012 submission concerned also numerous other cost items, such as raw materials, packing costs, manufacturing salaries and wages, manufacturing overheads, for gas, fuel and other electricity, depreciation, and income from by-products.

2.35. Second, the implication that manufacturing salaries and wages differed for sales in different markets was contradicted by Taghleef's allegation that the products sold domestically and for export were "similar in basic characteristics" and were all produced at the company's sole manufacturing facility.[16] This suggests that the manufacturing costs of the products should also be practically identical. Indeed, the idea that manufacturing costs should differ between products merely because these products sell in different markets appears to be contrary to business or common sense.

2.36. Third, the allocations themselves made little sense. For instance, Taghleef allocated an amount of zero to certain cost categories for domestic sales and/or export sales to Pakistan, and allocated all of those cost categories to the non-Pakistan export sales. For instance, for "manufacturing salaries and wages", there were no fixed or variable labour costs at all associated with producing the investigated product for domestic sales and sales to Pakistan. All labour costs were borne exclusively by products destined for export markets other than Pakistan.

2.37. In its Final Determination, the NTC explained that these allocations made no sense and that, therefore, Taghleef's new data would not be used to calculate COP. The NTC therefore used the Appendix 2 data, as previously provided by Taghleef itself in the Questionnaire Response.

2.38. Throughout the entirety of these WTO proceedings, the UAE has refused to address the NTC's determination and Pakistan's explanation of why Taghleef's calculations and the underlying allocations in the December 2012 email made no sense. The UAE's ostensible reason is a typographical error in the Final Determination, where the NTC makes the relevant determination mentioning – in error – only Taghleef Oman. However, it is clear from the overall context that this explanation relates to both companies. The NTC made this statement under a heading referring to "Taghleef Industries", and in response to the comments on the Statement of Essential Facts (Disclosure) filed by "Taghleef Industries". The words "Taghleef Industries" refers to both the Dubai and the Oman entities. The submission quoted in the NTC's analysis refers to a document that contained the comments of *both* Taghleef Industries LLC (Taghleef Dubai) and Taghleef Industries SAOG (Taghleef Oman) on the final disclosure (Statement of Essential Facts). The NTC's comments must therefore be read as responding to all of the issues addressed in the document, *with respect to both Taghleef Dubai and Taghleef Oman*. Moreover, both companies were very frequently referred to *collectively* during the investigation. Indeed, some of the issues that arose during the investigation – for instance, the COP issue and the requested level of trade (LOT) adjustment – were the same or similar for both companies.

2.39. The UAE has entirely refused to engage on the substance. Even when the Panel explicitly requested the UAE to comment on the NTC's determination (and on Pakistan's related arguments), the UAE responded with vague arguments that contradict established accounting principles. For instance, the UAE argued that the calculations and allocations in the December 2012 email do not "allocate" certain costs to sales to markets other than Pakistan and the UAE ("rest of the world"), but rather that they "house" those costs.[17] But the UAE did not explain the concept of "housing" (as opposed to "allocating") costs. The UAE also refers to something it labels as "non-cost indirect fixed costs"[18], a concept that makes no sense.

2.40. The UAE has spent most of its arguments on the COP issue to argue that, when the NTC requested Taghleef to break out the COP between domestic and export sales, the NTC was not referring to the Appendix D-3 data, but rather only to the Appendix 2 data. Pakistan has explained that this argument is based on an artificial split between the Appendix D-3 and Appendix 2 data. In reality, Appendix D-3 contained information on domestic sales, and the last (COP) column was merely intended to report, for the sake of convenience, the COP figure from Appendix 2, to facilitate the investigating authority's below-sales-cost analysis. The UAE is therefore entirely wrong to argue that Section F of the Questionnaire (to which Appendix 2 was attached) contained "general" cost information – which the UAE argues should not have been used at all by the investigating authority – whereas Appendix D-3 was intended to reflect COP for domestic sales. It makes little sense to argue that the domestic sales data base was the proper locus for providing cost information. In any event, wherever cost information is being provided, an investigated company cannot simply provide aggregate figures without any breakdown into their component parts.

[16] Taghleef's Questionnaire Response, p. 20.
[17] UAE's response to Panel Question 48, para. 54.
[18] UAE's response to Panel Question 48, para. 54.

2.41. Moreover, the Panel need not resolve the question of how Taghleef should have understood, or how it understood, the NTC's requests for information. This is because Taghleef ended up trying to submit the specific information that the NTC had been requesting from the very beginning. In its 18 December 2012 email, Taghleef finally supplied the type of documents and information that the NTC had requested from it on multiple previous occasions. Those documents pertained to the costs of domestic and export sales, and a reconciliation of these calculations with the COP data as set out in Appendix 2 (and by extension to Taghleef's financial statements).[19] Taghleef broke out the Appendix 2 data into the COP of domestic and export sales, provided that data on a quarterly basis, and sought to reconcile that data with Appendix 2. The problem was, of course, that these calculations were entirely unconvincing, for the reasons set out by the NTC in its Final Determination and by Pakistan in its first written submission.[20] The NTC was thus unable to accept these arguments and these calculations.

2.42. The key "take-away" from Taghleef's 18 December 2012 email is that the company knew exactly what it was required to demonstrate so that the NTC would be in a position to use the Appendix D-3 data. This disproves the UAE's insistence that Taghleef had not been properly informed by the NTC as to what kind of information the company was required to provide in order to substantiate its Appendix D-3 data. In particular, contrary to the UAE's arguments, Taghleef had understood all along that, in order to substantiate its Appendix D-3 figures, it was required to split the COP data in Appendix 2 into domestic and export sales COP data and to reconcile these disaggregated figures with the overall figures in Appendix 2 in the original Questionnaire Response (and ultimately with its financial statements).

2.43. For all of the above reasons, Pakistan requests the Panel to reject the UAE's claim pertaining to the NTC's use of Taghleef Appendix 2 costs of production.

2.5 The Panel should reject the UAE's claim under Article 2.4 of the Anti-Dumping Agreement

2.44. The Panel should also reject the UAE's claim under Article 2.4 of the Anti-Dumping Agreement that the NTC improperly rejected Taghleef's request for a LOT adjustment.

2.45. The NTC acted entirely within its discretion to reject Taghleef's request for adjustment. Taghleef failed to articulate and substantiate the basic conditions that would justify an LOT adjustment. Adjustments for LOT are warranted when there is a consistent and distinct difference in functions and activities of the seller for different types of sales, meaning that sales are demonstrably made at different marketing stages of the sales process and these differences translate into a pattern of consistent price differences. Taghleef failed to provide any meaningful evidence that would have demonstrated the existence of such differences. There was no description of Taghleef's functions and activities at each level of trade in the domestic or export market. Nor was there any explanation of the categories of Taghleef's clients and of their respective functions and activities.

2.46. Taghleef's sole contention was that it sold to Pakistani distributors at a lower price because those exporters conducted certain marketing activities for which the exporters were "compensated" by the exporter, via a lower export price. However, Taghleef failed to demonstrate that any such arrangement actually existed. Taghleef provided to the NTC a copy of a single agreement with one exporter, but no corresponding agreement with other Pakistani distributors. Instead, Taghleef claimed, without any evidentiary basis, that an "industry practice" existed. Thus, Taghleef, in effect, accepted that it was unable to prove its allegations that it had a "consistent" pricing policy (vis-à-vis its Pakistani distributor customers) that was driven by the alleged "additional cost" of those distributors.

2.47. Moreover, even the single agreement provided failed to bear out any of Taghleef's allegations and indeed contradicted them. For instance, the price discounts were granted for reasons unrelated to cost savings. Other contractual elements surrounding the price discounts also contradicted Taghleef's assertions. Taghleef was also unable to quantify the alleged price discounts and tie them to the distributors' distribution costs. Taghleef explicitly admitted that the Pakistani distributors do

[19] Taghleef's 18 December 2012 Email, Exhibit PAK-12-A (BCI) and See Taghleef Letter re Dumping Calculation (30 November 2012), p.2. Exhibit ARE-19 (BCI).
[20] Pakistan's first written submission, paras. 3.193–3.203.

not share their costs and profits margins with Taghleef. But it was precisely *these cost figures that, according to Taghleef and the UAE, were the contractual* basis of the discounts to be granted. Pakistan fails to see how Taghleef could have compensated Pakistani distributors for additional costs if it had no information about these figures. If the terms of the contract mean anything, Taghleef should have been provided with some figures from its distributor customers, to be able to reimburse them for their allegedly increased costs by means of a discount.

2.48. Instead of the actual costs, Taghleef provided the NTC with an alleged "break-down" with percentage-based estimates. No basis was provided to explain how these figures were derived. The table provided by Taghleef thus appears to have been prepared specifically for purposes of this dispute. Nor did Taghleef make any attempt – nor does the UAE try to do so now – to tie any of the figures in this table, such as the final percentage figure, to any of the adjustments claimed by Taghleef in the spreadsheets submitted to the NTC.

2.49. Finally, yet another anomaly emerges from Taghleef's figures. As the NTC noted, the discounts granted to the same Pakistani distributors differed depending on whether the selling party was Taghleef LLC (UAE) or Taghleef SAOG (Oman). The UAE argues that the NTC should not have attached significance to this fact.[21] But the fact that the cost amounts for the same distributor differed based on who the seller was (Taghleef Dubai or Taghleef Oman) is inconsistent with the story that the discounts were driven by the additional selling and distribution costs *incurred by the Pakistani distributors*. If that were true, the discount amounts should be identical for each distributor regardless whether the seller was Taghleef LLC or Taghleef SAOG. The UAE has consistently failed to provide any response to these arguments. Instead it argues that there is nothing in Article 2.4 that requires that the LOT adjustment figures must be the same across all investigated companies and transactions. But obviously Article 2.4 does not speak to such highly case-specific facts. Rather, the question is whether the arguments made by the company in support of its adjustment request are internally coherent and plausible and whether the exporter claiming the adjustment has satisfied its burden of proof. This was obviously not the case.

2.50. The NTC's analysis describes the above factors and concludes that Taghleef had not substantiated its request. For this reason, the NTC was unable to grant the requested amount. Nothing in the UAE's arguments demonstrates that the NTC somehow exceeded the bounds of its discretion in making this determination. In reality, no objective investigating authority would have been able, on the basis of Taghleef's arguments and (lack of) evidence, to grant the adjustment.

2.51. For the above reasons, the Panel should reject the UAE's claim under Article 2.4 of the Anti-Dumping Agreement.

2.6 The Panel should reject the UAE's claims under Article 3.2 of the Anti-Dumping Agreement with respect to import volumes

2.52. The UAE's argues that the NTC's analysis of import volumes was deficient for multiple reasons. According to the UAE, the NTC focused only on the increase in imports observed in 2009 (rather than for the entire POI) and failed to provide a reasoned an adequate explanation that adequately addresses trends throughout the POI.

2.53. This is incorrect. The NTC's analysis, reasoning, and methodology was fully consistent with WTO law, given that the NTC fully evaluated all the facts on record and reached the conclusion that there was a significant increase in imports during the POI, both in absolute terms and relative to domestic production. The NTC examined the trends in import volumes during the entire POI, including the last most recent period of POI, which the UAE specifies as January-June 2010.[22] The NTC attached more analytical significance 2009 because it was the most recent period of the POI for which there was complete full-year data. The NTC explicitly addressed the last six months of the POI and found that the decrease in imports during that period did not offset the increase experienced in 2009.[23] The UAE argues that the evolutions in trends in 2010 undermine the NTC's entire determination. But this is simply not the case.[24]

[21] UAE's first written submission, para. 252.
[22] UAE's opening statement at the first substantive meeting, para. 47.
[23] Pakistan's first written submission, paras. 3.342-3.362.
[24] Pakistan's second written submission, paras. 2.148-2.149.

2.54. To recall, Article 3.2 of the Anti-Dumping Agreement grants the investigating authority a measure of discretion in its methodology.[25] In *China – Broiler Products (Article 2.15 – US)*, the panel found that nothing in Articles 3.1 and 3.4 prevents an investigating authority from examining the impact of imports throughout the POI, but with a focus on the end of the POI, which is the period for which dumping has been found.[26] These findings made under Article 3.4 apply equally to Article 3.2 because both provisions require the investigating authority to observe trends relating to how dumped imports impact the domestic industry.

2.55. The UAE also argues that the NTC failed to explain why the increase in imports was "significant" and failed to analyse import trends both relative to production and consumption. Both arguments are incorrect. In *China – Cellulose Pulp*, the panel noted that Article 3.2 provides no guidance as to what circumstances support a finding that an increase in imports is "significant". The significance of any increase in import volumes is a question of whether the magnitude of that increase may result in material injury to the domestic industry. This is determined only on a case-by-case basis.[27] Article 3.2 also does not require an investigating authority to find a "significant" increase for absolute, relative to domestic production, *and* absolute, relative to domestic consumption. The NTC's analysis focused on import volumes in absolute terms. The NTC found an increase of 56.86 per cent and noted that this increase was "significant[]".[28] It also observed that the subsequent decrease in January–June 2010 did not offset that strong 2009 increase. In any event, the NTC also found a relative increase in import volumes of 6 per cent. The NTC could have easily found this increase significant in the light of the precarious state of the domestic industry. However, it was sufficient that the NTC focused its analysis on the significant absolute increase of over 50 per cent.

2.56. For the above reasons, Pakistan requests the Panel to reject the UAE's claims under Article 3.2 of the Anti-Dumping Agreement regarding the NTC's volume effects analysis.

2.7 The Panel should reject the UAE's claims under Article 3.2 of the Anti-Dumping Agreement with respect to price effects

2.7.1 The UAE's claim on price undercutting

2.57. The UAE's price undercutting claim focussed principally on the following arguments. *First*, the NTC allegedly relied improperly on data taken from PRAL to determine the landed costs of imports, whereas it should have rather relied on data presented by the investigated companies. *Second*, the NTC allegedly failed to ensure price comparability between the two types of BOPP film that constituted the investigated product. *Third*, the level of price undercutting of 4.35 per cent was not "significant" within the meaning of Article 3.2. *Fourth*, the NTC allegedly focussed exclusively on trends in 2009. Thus, according to the UAE, the NTC did not undertake a "dynamic", trend-based assessment over the entire POI. Instead, the UAE alleges, the NTC limited itself to a "mathematical" finding based exclusively on the year 2009.[29] *Finally,* the NTC allegedly disregarded the effects of the 2009 global financial crisis.[30]

2.58. Pakistan explains that,[31] *first*, the NTC did not ignore the exporters' data – it used PRAL data *only* for the non-cooperating exporters. *Secondly*, the NTC did not ignore the product mix. It ensured price comparability between exports and the domestic industry and was thus perfectly entitled to calculate one single blended price. This blended price did not introduce any distortion to the exporters' disadvantage because the domestic industry's product mix contained relatively *more* of the cheaper product. Therefore, the NTC's methodology of averaging the product mix on both sides *understated* the price undercutting, which favoured the exporters. *Third,* the 4.35 per cent margin of price undercutting was "significant", within the meaning of Article 3.2, given that BOPP is a commodity product and competition is thus based primarily on price. This means that consumers

[25] Panel Report, *Guatemala – Cement II*, para. 8.266; Appellate Body Report, *Korea – Pneumatic Valves*, para. 5.310; Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice*, para. 204.
[26] Panel Report, *China – Broiler Products (Article 21.5 – US)*, para. 7.155.
[27] Panel Report, *China – Cellulose Pulp*, paras. 7.40-7.45.
[28] Final Determination, para. 35.3. Exhibit PAK-1 (BCI).
[29] UAE's opening statement at the first substantive meeting, para. 50.
[30] UAE's first written submission, paras. 316-334.
[31] Pakistan's first written submission, paras. 3.364-3.400.

are particularly price-sensitive and a price undercutting margin of 4.35 per cent has a significant competitive impact.

2.59. *Fourth*, as explained for the volume effects analysis above, the NTC did not improperly discount 2010 data in its price undercutting analysis. Instead, the NTC considered the relationship between the domestic price and landed cost in the last six months of the POI and determined that the amount of overselling in the first half of 2010 was less than the 2009 price undercutting. Specifically, the 2009 price undercutting rate was 4.35, while the rate of overselling in January-June 2010 was less. Pakistan finds puzzling the UAE's derogatory use of the term "mathematical". In *EC – Salmon (Norway)*, the panel explained where the prices of the investigated products are lower than the domestic prices "there is, as a factual matter, price undercutting".[32] Thus, if prices of imports are lower than those of domestic products, it is a mathematical fact that price undercutting exists. Moreover, a price undercutting rate of 4.35 per cent is significant, given the commodity nature of the BOPP film market, which the UAE and Taghleef recognize.[33] *Finally*, the global financial crisis was not relevant for the price effects analysis. The NTC correctly analysed it as a non-attribution factor under Article 3.5 of the Anti-Dumping Agreement.

2.7.2 The UAE's claim on price depression

2.60. In its price depression claim, the UAE argues that: *First,* the NTC limited its finding to 2009 only and therefore failed to conduct a dynamic assessment of the trends during the whole POI. *Second*, the NTC failed to link the price *decrease* that it observed with the dumped imports. Moreover, it failed to consider whether the price depression it had identified was "significant". The UAE alleges that the fact that the decrease in costs in 2009 were almost identical to the price decreases in the same year highlights the NTC's deficient analysis. *Third*, the UAE alleges that the NTC's finding of price depression, but not of price suppression, raises questions about the "explanatory force" of the alleged dumped imports.[34]

2.61. Contrary to the UAE's argument, the NTC's price depression analysis was fully WTO-consistent.[35] *First*, the NTC was fully aware and analyzed all relevant trends during the POI. It acknowledged the price increase between 2007 and 2008, but also relied on the fact that this price increase was eclipsed by the subsequent price decrease between 2008 and 2009. Consistent with its methodology, the NTC analysed the trends throughout the POI, including during the first half of 2010. However, the NTC ultimately placed greater significance on the 2009 data. For price depression, the NTC explained that the price of the domestic like product increased by 27.44 per cent in 2008 from its 2007 levels. The NTC then took note of a 13.24 percent decrease in the price of the domestic like product in 2009. The NTC also observed that domestic price recovered in the last six months of the POI, but that the decrease during the preceding year 2009 had been "overwhelming".[36] The NTC also took into account that the cost of inputs had declined alongside the price of the like domestic product. However, the NTC explained that the prices of the domestic like product had decreased more than the costs.[37] Finally, the NTC explained that the price increase in the first half of 2010 was insufficient to offset the significant price depression observed in 2009. Thus, the NTC's analysis took into account all of the relevant facts and trends and was based on the totality of the evidence.

2.62. Regarding the UAE's *second* argument, it was entirely reasonable, and within the NTC's bounds of discretion, to find that the price decrease was attributable both to dumping and to a decrease in costs. The NTC focused on the *absolute* price decrease and found that this decrease was greater than the absolute decrease in costs, which means that a part of the price decrease had been brought about by dumping. The UAE's contrary argument is premised on a comparison of the relative price and cost declines of 13.24 per cent and 13.4 per cent, respectively. According to the UAE, the similarity of these figures indicates that the price depression was caused entirely by the decrease in costs and not the dumped imports.[38] This is incorrect. The NTC was entitled to decide whether it was most appropriate to focus on the absolute or relative figures. With respect to the UAE's allegation

[32] Panel Report, *EC – Salmon (Norway)*, para. 7.638.
[33] Taghleef Post-Hearing Submission, p. 17. Exhibit ARE-13; UAE's first written submission, para. 328.
[34] UAE's first written submission, paras. 335-350.
[35] Pakistan's first written submission, paras. 3.402-3.416.
[36] Final Determination, para. 36.2.1 (after Table IX). Exhibit PAK-1 (BCI).
[37] Final Determination, paras. 36.2.1-32.2.4, p. 38. Exhibit PAK-1 (BCI).
[38] UAE's written opening statement, paras. 70-71.

that the NTC failed to analyse whether the price decrease was "significant", it is obvious that a price decrease of 13.24 per cent of a commodity can be considered "significant". The NTC did not need to spell out this obvious fact in great detail. To recall, for price depression to be "significant" within the meaning of Article 3.2 of the Anti-Dumping Agreement, it is not necessary that the word "significant" appear in the published report.[39] In any event, while the NTC did not use the term "significant", it stated that the price depression was "overwhelming", a term which at the very least corresponds to, and even exceeds, the notion of "significant".

2.63. Pakistan is perplexed by the UAE's *final* argument, pursuant to which the NTC's finding of price depression and not price suppression raises questions about the "explanatory force" of the dumped imports. *First*, it is well established that the three types of price effects under Article 3.2 of the Anti-Dumping Agreement are separate and independent elements.[40] Thus, the NTC was not required to make an affirmative finding of price suppression just because it had made an affirmative finding of price depression. *Second*, the NTC took account of the decrease in costs and acknowledged that it was one of the drivers of the price depression. However, the NTC also examined the explanatory force of the dumped imports and found that they were also partly responsible for the observed price depression.[41] Of course, dumped imports need not be the sole (or the most significant) cause of the price depression.

2.64. Based on the above, Pakistan requests the panel to reject the UAE's claims on price effects under Article 3.2 of the Anti-Dumping Agreement.

2.8 The Panel should reject the UAE's claims under Articles 3.1 and 3.4 of the Anti-Dumping Agreement

2.65. The UAE challenges the NTC's injury analysis on the grounds that, *first*, the NTC allegedly failed to examine all the relevant Article 3.4 injury factors, including the "magnitude of dumping". *Second*, the NTC allegedly failed to properly evaluate the relevant factors. The UAE alleges that the NTC provided a "descriptive and quantitative account" of the injury factors, presented its analysis in selective way, without linking the developments to the dumped imports. The UAE also alleges that the NTC failed to examine the trends in the most recent period of the POI. *Third*, the NTC allegedly failed to undertake a "holistic examination" of all the injury factors.

2.66. It appears that the central element to the UAE's claims is its dissatisfaction with the methodological choices of the NTC. However, the UAE has not succeeded in proving that, in making those choices, the NTC acted beyond the bounds of its discretion. With respect to the UAE's specific arguments, *first*, even if the NTC did not *explicitly* address the factor "magnitude of dumping", the NTC found considerable dumping margins for the UAE exporters elsewhere in its Final Determination. Consequently, the Panel may find that the NTC has implicitly analysed the factor magnitude of dumping.

2.67. *Second*, Pakistan explains that the NTC addressed each of the seven factors.[42] The NTC first conducted an adequate item-by-item analysis of the individual injury factors. The NTC found that the factors profitability, cash flow, salaries/wages, productivity, return on investment, sales, and market share pointed to injury to the domestic industry. The NTC also found substantial dumping margins for the UAE exporters. In contrast, the NTC noted that the factors production and capacity utilization, inventories, employment, growth and investment, and the ability to raise capital did not point to injury.[43] Moreover, the NTC attached specific importance to the volume and price effects, domestic sales, market share, profitability, and cash flow. The NTC found that the positive or neutral developments in some factors did not outweigh or offset the negative trends observed in the other injury factors.[44] Pakistan explains that the NTC did not discount any part of the POI. Instead, it assessed trends throughout the entire POI. It then focused its analysis on the more recent portion of the injury POI for which dumping had been found to exist. In any event, the NTC's analysis of the specific injury factors contradicts the UAE's allegation that the NTC ignored the trends in

[39] Panel Report, *Thailand – H-Beams*, para. 7.161; Panel Report, *Korea – Certain Paper*, para. 7.253.
[40] Appellate Body Report, *China – GOES*, para. 137. See also Panel Reports, *China – Cellulose Pulp*, para. 7.63; and *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 7.129.
[41] Final Determination, para. 32.2.4. Exhibit PAK-1 (BCI).
[42] Market share, sales, profits, productivity, salaries & wages, return on investment, and cash flow.
[43] Final Determination, paras. 37.1-46.2 and 47.1, Table XX. Exhibit PAK-1 (BCI).
[44] Final Determination, paras. 47.3-47.4. Exhibit PAK-1 (BCI).

January-June 2010. The NTC assessed trends in the first six months of 2010 and generally found that either they confirmed the negative trends observed in 2009 or, even if the indictors were improving, the improvement was not sufficient to offset the downward trends observed in 2009 and elsewhere during the POI.[45]

2.68. *Third*, the NTC adequately evaluated each factor and conducted a holistic examination of all the injury factors.[46] Contrary to the UAE's arguments, Article 3.4 of the Anti-Dumping Agreement neither requires the investigating authority to measure the degree of the impact of each injury factor on the domestic industry, nor does it require that each injury factor show a pronounced downward trend.[47] The decision whether the domestic industry suffered material injury is taken at the end of the overall, holistic examination of all the injury factors taken together. This is exactly what the NTC did. In the analysis of the individual factors, the NTC observed downward trends and noted these changes, especially those occurring in the most crucial and recent part of the POI. In any event, even if the NTC was required to show that the impact of each of the factors on the domestic industry was significant, its findings on the seven factors demonstrate that the dumped imports had a strong impact on the state of the domestic industry.[48]

2.69. As a result, Pakistan requests the Panel to reject all of the UAE's claims under Articles 3.1 and 3.4.

2.9 The Panel should reject the UAE's claims under Articles 3.1 and 3.5 of the Anti-Dumping Agreement

2.70. The UAE's challenge to the NTC's **causation analysis** principally revolves around the following three arguments. *First*, the UAE argues that the NTC's causation analysis was flawed from the outset because the preceding injury analytical steps were flawed.[49] *Second*, the UAE alleges that NTC's causal link determination relied improperly on a "few negative trends in injury factors".[50] *Third*, the UAE accuses the NTC of an improper determination of correlation in time between dumped imports and the key injury factors (market share, sales, and profits).[51] The UAE particularly takes issue with Pakistan's use of the term "increased imports" and accuses Pakistan of importing concepts from the Agreement on Safeguards into the anti-dumping disciplines[52] The UAE also alleges that the NTC improperly focussed "on only those factors supporting an affirmative causation determination".[53]

2.71. In response to the UAE's claims and arguments, *first*, Pakistan has demonstrated that the NTC conducted the injury analytical steps correctly and in accordance with the requirements of the Anti-Dumping Agreement. Hence, the NTC's causation analysis was not based on a flawed foundation.[54] *Second*, it was perfectly appropriate for the NTC to focus, in its causation analysis, on the same injury factors that were central to its affirmative injury determination. Moreover, the Anti-Dumping Agreement does not require an individual analysis of the coincidence between imports and every single injury factor, especially the factors that trend positively.[55]

2.72. *Third*, the NTC's determination of a coincidence in time between the dumped imports and the three key injury factors was reasonable, properly explained, and well within the bounds of the NTC's discretion as the investigating authority.[56] The UAE's focus on Pakistan's use of the term "increased imports" indicates that the UAE might be confused about the legal requirements of Article 3.5 and

[45] See Pakistan's second written submission, paras, 2.240-2.242.
[46] Pakistan's first written submission, paras. 3.429-3.495.
[47] UAE's first written submission, paras. 373-439.
[48] Final Determination, paras. 37.1-37.5 (market share); paras. 38.1-38.3 (sales); Table XV (profits); paras. 43.1-43.3 (productivity and salary & wages); paras. 44.1-44.3 (return on investment); paras. 42.1-42.3 (cash flow), Exhibit PAK-1 (BCI).
[49] UAE's first written submission, paras. 459-461.
[50] UAE's first written submission, para. 464.
[51] UAE's first written submission, para. 465.
[52] UAE's opening statement at the first substantive meeting, para. 70.
[53] UAE's opening statement at the first substantive meeting, para. 69.
[54] Pakistan's first written submission, paras. 3.513-3.517.
[55] Pakistan's first written submission, paras. 3.518-3.523.
[56] Pakistan's first written submission, paras. 3.524-3.531.

the general practice of how investigating authorities around the world, including the NTC, conduct the causation analysis.

2.73. To recall, in its causation analysis, the NTC first found "a strong time correlation" between import volumes and the three key injury factors.[57] The NTC then placed this correlation into the context of its price depression finding,[58] and further elaborated on the causal link by linking all of these phenomena with the domestic industry's profitability.[59] Thus, the NTC integrated into its causation determination its previously-found "building blocks", such as the findings on price suppression or price depression.[60] The UAE has not explained why it is improper that the NTC focused its analysis on the three key injury factors as part of its injury analysis under Article 3.4. It would make no sense, as the UAE seems to argue, for the NTC to have analyzed correlation/coincidence between imports and the positively trending factors.

2.74. For example, a proper examination of the evolution of trends in 2007, 2008, and 2009 supports Pakistan's view of the NTC's market share analysis. The volume of dumped imports slightly decreased between 2007 and 2008, and in this period, the market share of the domestic industry increased. Conversely, between 2008 and 2009, the volume of dumped imports increased significantly, and the market share of the domestic industry decreased. This indicates a causal link between the dumped imports and market share of the domestic industry.[61]

2.75. Further, the UAE's arguments regarding the NTC's **non-attribution analysis** focus on Taghleef's alleged arguments before the NTC based on a list of six other causal factors. Taghleef raised these "other factors" in a passing reference to the Annual Report of a Pakistani domestic producer (Tri-Pack). The UAE argues that this list of factors presented by Taghleef triggered the NTC's duty to conduct a non-attribution analysis, even in the absence of any further evidence or argument that would substantiate the factors listed.[62]

2.76. Taghleef's superficial reference to the passage at issue in Tri-Pack's Annual Report was not sufficient to trigger the NTC's duty to conduct a non-attribution analysis for these alleged other factors.[63] Pointing to a bare listing of possible factors, set out in an Annual Report of a company, without any further arguments or evidence, does not fulfil the textual requirements of Article 3.5, as interpreted in the jurisprudence.[64] WTO case law has firmly established that an investigating authority is not required to analyse (or even mention) an alleged "other factor" as a cause of injury if no relevant evidence has been presented to the authority by the investigated company.[65] Rather, an investigating authority's duty to analyze another factor is triggered only if an interested party provides sufficient evidence that the factor causes injury.[66] In *EU – Fatty Alcohols (Indonesia)*, the interested party made extensive and detailed arguments during the investigation and provided extensive data to explain why the EU investigating authority must analyze an "other factor". Still, the panel found that the company had not done enough to trigger the obligation for the investigating authority to address that "other factor".[67] Taghleef in this case did much less than the company in *EU – Fatty Alcohols (Indonesia)*, because it provided no evidence at all.

2.77. This additional evidence would have been required also because the applicant Tri-Pack produced two separate products (BOPP Film and CPP film). Therefore, the statements to which Taghleef referred in Tri-Pack's 2009 Annual Report relate to both these products. However, only BOPP Film was a product subject to the investigation. Hence, a statement about factors that affected the state of the entire company – with both its product lines – does not necessarily hold for one of those products alone. In its attempt to justify Taghleef's insufficient arguments *ex post*, the UAE

[57] Final Determination, para. 48.2. Exhibit PAK-1 (BCI).
[58] Final Determination, para. 48.2. Exhibit PAK-1 (BCI).
[59] Final Determination, para. 48.2. Exhibit PAK-1 (BCI).
[60] Pakistan's second written submission, paras. 2.268-2.269.
[61] Pakistan's second written submission, paras. 2.274.
[62] UAE's first written submission, paras. 471–472.
[63] Pakistan's second written submission, paras. 2.277-2.285.
[64] Panel Report, *China – X-Ray Equipment*, para. 7.267; Panel Report, *EU – Fatty Alcohols (Indonesia)*, para. 7.188.
[65] Panel Report, *China – X-Ray Equipment*, para. 7.267; Panel Report, *EU – Fatty Alcohols (Indonesia)*, para. 7.196.
[66] Panel Report, *EU – Fatty Alcohols (Indonesia)*, para. 7.196.
[67] Panel Report, *EU – Fatty Alcohols (Indonesia)*, paras. 7.201-7.203.

alleges that BOPP Film production is "considerably more important to Tri-Pack in 2009"[68] and that the company had three production plants for BOPP film as compared to one for CPP film. In addition, the UAE claims that Tri-Packs' annual production of BOPP film is four times greater than CPP film.[69] However, none of these statements appears in Taghleef's post-hearing submission. In any event, none of these statements indicates which data or statement in the Annual Report applies specifically to BOPP film. Even leaving aside this product-specific point, the evidentiary value of statements in Annual Reports for an anti-dumping investigation is uncertain. Public companies – like Tri-Pack – have multiple motivations to present information in a certain way in their Annual Reports, given the incentives they face and the various stakeholders for whom the reports are prepared. These elements are different and separate from the focus of anti-dumping investigations. Thus, for the purposes of an anti-dumping investigation, interested parties relying on these statements must go beyond merely repeating parts of the domestic industry's Annual Report. For all these reasons, the Panel should find that the NTC was justified in not engaging with Taghleef's laundry-list of alleged factors. A contrary decision is not only a departure from previous decisions (like *EU – Fatty Alcohols*), but risks setting the bar too low for investigated parties and carries the risk of imposing an undue burden on the already significant workload of an investigating authority. This would fall particularly heavily on lower-resourced countries like Pakistan.

2.78. The UAE's other argument on non-attribution is that the NTC's non-attribution analysis was deficient, because it did not assess the impact of the global financial crisis.[70] According to the UAE, the global financial crisis was responsible for the price declines in 2009 and thus the decline in profitability of the domestic industry. But the NTC adequately explained that there was no contraction of demand in the Pakistani BOPP market during the global crisis.[71] In fact, there was an *increase* in total market size/total demand. Therefore, the global financial crisis could not have been an injury factor in 2009. Simply put, when demand is high and prices decrease, the only plausible explanation is that there is oversupply of the product in the market. As the NTC consistently explained, the excess supply of BOPP film was caused by the significant increase in dumped imports in 2009.[72]

2.79. Pakistan requests the Panel to reject the UAE's claim under Articles 3.1 and 3.5 regarding the NTC's causation and non-attribution analyses.

2.10 The Panel should reject the UAE's claims under Article 6.2 of the Anti-Dumping Agreement

2.80. The UAE's claim under Article 6.2 is connected to the NTC's April 2015 formal ratification and re-confirmation of the February 2013 Final Determination. To recall, the April 2015 ratification of the Final Determination occurred after the NTC rectified a formal problem of its proper constitution. In this April 2015 act, the newly (and formally properly) constituted NTC issued a formal ratification of the February 2013 Final Determination. This April 2015 ratification was formal act and did not result in any substantive changes to the February 2013 Determination.

2.81. The UAE argues that, when issuing this formal ratification, the NTC failed to observe the due process rights of interested parties, including those of the UAE exporter. This claim is incorrect and should be rejected. The UAE's argument is premised on an erroneous understanding of the rights of interested parties under Article 6 of the Anti-Dumping Agreement. The UAE essentially implies that interested parties should have the limitless right, at any point in time, to provide new information and comments in order to influence any deliberative process of an investigating authority.

2.82. But this is not correct. Where, in the present case, an investigating authority simply engaged in a further deliberative process, weighs and assesses the previously-gathered information and evidence, and does not gather new evidence, there is no requirement to provide interested parties with a further opportunity to comment on the aspects of the investigation that were not revisited in the remand process. Rather, an investigating authority is entitled to conduct its deliberations, and

[68] UAE's response to Panel Question 74, para. 79.
[69] UAE's response to Panel Question 74, para. 79.
[70] UAE's second written submission, para. 221.
[71] Final Determination, Table-XI, para. 48.1. Exhibit PAK-1 (BCI).
[72] Pakistan's first written submission, paras. 3.541-3.545; Pakistan's response to Panel Question 75.

to repeat those deliberations in a remand procedure, without comment or input from interested parties. The parties' due process rights are not violated in those circumstances.

2.83. The UAE relies on *Korea – Certain Paper (Article 21.5 – Indonesia)* as proof of its proposition that collection of evidence is not the criterion for defining circumstances in which an opportunity to comment must be granted.[73] But the panel report in *Korea – Certain Paper (Article 21.5 – Indonesia)* does not stand for the UAE's proposition. Rather, that panel explicitly rejected the UAE's proposition that the remand procedure was part of the original investigation process.[74] Thus, merely pointing to the fact that the remand proceeding reconsidered the original determination is not dispositive.

2.84. What matters instead is that the panel report in *Korea – Certain Paper (Article 21.5 – Indonesia)* concerned a reconsideration of the original findings *in the light of a WTO-finding of inconsistency*. This means that the approach of the investigating authority, with its national legal underpinnings, had been declared to be WTO inconsistent. That meant that in the remand/implementation proceeding, the investigating authority had to reconsider and revise its determination to bring it into line with the recommendations and rulings of the DSB. This is why the panel emphasized the right of interested parties to comment on the redetermination.

2.85. Hence, existing case law supports Pakistan's arguments and the UAE's claim under Article 6.2 of the Anti-Dumping Agreement should therefore be rejected.

2.11 The Panel should reject the UAE's claims under Articles 11.1 and 11.3 of the Anti-Dumping Agreement

2.86. The UAE's submissions under Article 11.1 and 11.3 of the Anti-Dumping Agreement can be crystallised into three set of arguments: *First,* the UAE argues that the NTC's decision to extend the anti-dumping duties was flawed because it was based on the original anti-dumping measure, which the UAE considers to be WTO inconsistent.[75] *Second,* the UAE challenges the NTC's likelihood of dumping determination, including the calculation of the UAE's calculation of the country-wide dumping estimates. According to the UAE, the NTC calculated dumping margins, and its calculations are inconsistent with Article 2 of the Anti-Dumping Agreement.[76] *Third*, the UAE argues that the NTC's likelihood of injury determination is not based on positive evidence and an objective examination, and it is not supported by a sufficient factual basis.[77]

2.87. All of these arguments are unfounded. First, as affirmed by the Appellate Body,[78] original proceedings and sunset proceedings are separate administrative acts. Indeed, the NTC's original and sunset proceedings are regulated under different provisions of the Anti-Dumping Agreement and are underpinned by separate and distinct analyses. Therefore, flaws in an original determination can invalidate a sunset review determination only to the extent that an investigating authority *relies* on the relevant tainted parts of the original determination as an element of its determinations in the sunset review.[79] The NTC did not rely in the sunset review on the determinations in the original investigations determination.

2.88. Regarding the UAE's second argument, it is not correct that the NTC calculated dumping margins, within the meaning of Article 2 of the Anti-Dumping Agreement. Rather, the NTC calculated country-wide estimates of likely dumping to provide a rigorous estimate of whether exporters from the affected countries would likely engage in dumping as soon as the anti-dumping duty is revoked. These country-wide estimates of likely dumping are different from company-specific dumping margins calculated in original proceedings. The mere fact that, in calculating these country-wide estimates, the NTC used normal value-like or export price-like concepts does not automatically mean that a dumping margin *stricto sensu* is being calculated. The determination of likelihood of dumping requires an analysis of the exporter's pricing behaviour in its domestic market and to third country markets. Nevertheless, this does not mean that determining a country-wide dumping estimate

[73] UAE's opening statement at the first substantive meeting, para. 100.
[74] Panel Report, *Korea – Certain Paper (Article 21.5 – Indonesia),* para. 6.79, referring also to para. 6.74.
[75] UAE's first written submission, paras. 524-528.
[76] UAE's first written submission, paras. 532-545.
[77] UAE's first written submission, paras. 546-561.
[78] Appellate Body Report, *US – Anti-Dumping Measures on Oil Country Tubular Goods*, para. 119; Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, paras. 106-107.
[79] See Pakistan's first written submission, paras. 3.617-3.632.

underpinned by normal value-like and export price-like concepts generates a dumping margin within the meaning of Article 2 of the Anti-Dumping Agreement. It is also irrelevant that the NTC referred to Pakistan law provision that govern normal value or export price. The reference to these provisions by the NTC must be placed in the context of what the NTC did and did not request from the exporters. In the sunset review questionnaire, the NTC did not request transaction-specific data that it requires to calculate individual dumping margins. Instead, the NTC requested aggregate sales information that did not allow for the calculation of individual dumping margins.[80] Therefore, the NTC never intended to calculate company-specific dumping margins, as it does in original anti-dumping investigations, for which transaction-specific data would obviously have been required.

2.89. The UAE's argument that the NTC's computation of country-wide estimates of likely dumping should be treated as if they were company-specific dumping margins and be subject to the full set of requirements under Article 2 of the Anti-Dumping Agreement is inconsistent with case law and would have undesirable consequences. In essence, the UAE's arguments would prevent investigating authorities from using country-wide dumping estimates when determining the likelihood of dumping without automatically becoming subject to Article 2. However, the Appellate Body has further emphasised that WTO Members are not required to calculate dumping margins in order to conduct a WTO-consistent sunset determination.[81] Moreover, the Appellate Body has explicitly confirmed that the country-wide analytical approach is consistent with Article 11.3. The UAE's arguments are therefore not consistent with those principles. The result would be a chilling effect on the use of a reliable and rigorous methodology in sunset reviews.[82] This could not have been intended by the drafters of the Anti-Dumping Agreement.

2.90. *Third*, to reach its findings and conclusion in the Sunset Determination, the NTC developed a clear methodology of factors it would evaluate and then analysed the trends in those factors. The UAE's claims and arguments regarding the sunset review, and its critique of the NTC's approach, are incorrect and go beyond the actual obligations of an investigating authority in this context. For example, the UAE argues that the NTC should have addressed the fact that the import price more than doubled between the end of the POI and the last year of the POR.[83] However, the UAE admits that a comparison between import prices and domestic prices does not form the basis for a likelihood of dumping determination.[84]

2.91. Moreover, the UAE alleges that, if the NTC's analysis were accepted, an investigating authority will always have justification for extending the anti-dumping measure. Hence, according to the UAE, foreign exporters are always caught in an "impossible catch-22 situation"[85] where they always lose. However, the UAE's position puts at risk the rights and methodological freedom investigating authorities enjoy under Article 11.3. The Appellate Body has confirmed that no particular condition of a domestic market is *a priori* precluded from justifying the extension of an anti-dumping duty. Thus, an investigating authority can rely in its analysis on potentially any case-specific development as part of its sunset determination. But that does not create an "impossible catch-22 condition". What matters is that the investigating authority must demonstrate, on the basis of objective and compelling evidence, that the removal of an anti-dumping measure would result in the continuation or recurrence of dumping. Accepting the UAE's proposition curtails the right of investigating authorities to find likelihood of injury in appropriate circumstances.[86]

2.92. The UAE also argues that the NTC failed to explain how a domestic industry with a quasi-monopoly, as the UAE alleges was the case in Pakistan, is likely to suffer injury and claims incorrectly that Pakistan's arguments in these proceedings on this point are unsubstantiated *ex post* assertion.[87] But that is incorrect. The NTC explained that the domestic industry would be vulnerable to price competition if the anti-dumping measures were revoked. This is the case even though the domestic industry enjoyed a high market share. A high market share and price vulnerability are not mutually exclusive phenomena, as the pervasive price competition of commodity markets means that the

[80] Pakistan's second written submission, paras. 2.307-2.314.
[81] Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 127. See, also, Panel Report, *US — Anti-Dumping Measures on Oil Country Tubular Goods*, para. 7.82 and Appellate Body Report, *US — Anti-Dumping Measures on Oil Country Tubular Goods*, para. 174.
[82] Pakistan's second written submission, para. 2.315; Pakistan's response to Panel question 87, para. 8.
[83] UAE's response to Panel Question 78, paras. 82-84.
[84] UAE's response to Panel Question 78, paras. 82-84.
[85] UEA first written submission, para. 554.
[86] Pakistan's second written submission, paras. 2.318-2.321.
[87] UAE's opening statement at the substantive meeting, paras. 75 and 81.

domestic industry can very quickly and easily lose this relatively high market share. Indeed, the UAE and Taghleef themselves acknowledged the commodity nature of the BOPP Film market.[88] Moreover, the UEA's fixation on the high market share ignores the fact that the NTC's finding of likelihood of injury is premised on a variety of other factors, and paints an overall picture of a domestic industry that faces injurious import competition in the event the anti-dumping measures are revoked.[89]

2.93. Finally, the UAE's argues incorrectly that the financial situation of the domestic industry was "self-inflicted" and this fact severed the causal link between dumping imports and injury. According to the UAE, the NTC was thus required to do more to establish a likelihood of injury. The UAE's argument is erroneous. The UAE position denies a domestic industry the ability to expand capacity or make other investments during the life of an anti-dumping duty, because any injury the domestic industry would suffer under a subsequent hypothetical removal of the duty would be "self-inflicted" and thus could not form the basis of an affirmative sunset determination. This cannot be correct. If there is likelihood of continuance or recurrence of injury from *imports*, a finding of a causal link remains possible even if other factors are also contributing to the injury.[90]

2.94. For the above reasons, the Panel should reject the UAE's claims under Articles 11.1 and 11.3 of the Anti-Dumping Agreement.

2.12 The Panel should reject the UAE's claims under Article 11.4 of the Anti-Dumping Agreement

2.95. The UAE alleges that Pakistan violated Article 11.4 of the Anti-Dumping Agreement because the NTC's sunset review proceedings exceeded 12 months. Central to the UAE's argument is that Pakistan may not use its domestic law to justify its non-compliance with its international obligations. The UAE also argues that the problem with the improper composition of the NTC is not new or extra-ordinary anymore because it already arose in the original investigation.[91]

2.96. Pakistan submits that the word "normally" in Article 11.4 should be given effective meaning. Thus, the term "normally" would permit the investigating authority to depart from the 12-month deadline for completing a sunset review where non-normal, extraordinary circumstances arise.[92] These type of circumstances would, in Pakistan's view, include *force majeure* or, as in this instance, domestic judicial challenges that are extraneous to the sunset review proceedings. Contrary to what the UAE argues, the domestic legal nature of these proceedings or the fact that the issue underlying that challenge (the NTC's composition) may have arisen in a previous instance does not prevent a court challenge from constituting a "non-normal" circumstance. What is essential is that the Lahore High Court proceedings were extraneous to the NTC's sunset review and were outside of the investigating authority's control, thus objectively impeding the NTC from conducting its work.

2.97. This argument is supported by the fact that the Anti-Dumping Agreement explicitly recognises that judicial proceedings may impede the ability of an investigating authority to adhere to the timelines prescribed in the Agreement. Articles 9.3.1 and 9.3.2 require the reimbursement of anti-dumping duties *normally* within 12 months, like Article 11.4, but not longer than 18 months. Footnote 20 the recognises that the observance of the time limits in Articles 9.3.1 and 9.3.2 may not be possible when the product in question is subject to "judicial review proceedings".[93] The UAE attempts to diminish the contextual significance of footnote 20 on the grounds that the footnote relates to provisions regulating reimbursements (refunds) of anti-dumping duties.[94] But this is irrelevant. What matters is that footnote 20 stands for the principle, and confirms, that judicial proceedings justify a departure from a deadline. The fact that footnote 20 applies specifically to judicial *refund* proceedings does not affect its relevance for other types of judicial proceedings.[95]

2.98. The NTC acted swiftly to conclude the sunset review as soon as soon as it received permission to do so. Starting on 5 September 2016, the date it was fully composed, the NTC completed the

[88] UAE's first written submission, para. 328; Taghleef Post-Hearing Submission, p. 17, Exhibit ARE-13.
[89] Sunset Review Determination, para. 33. Exhibit PAK-2 (BCI).
[90] Pakistan's second written submission, paras. 2.329-2.332.
[91] See UAE's first written submission, paras. 563-588.
[92] Pakistan's first written submission, paras. 3.693-3.727.
[93] Pakistan's first written submission, paras. 3.711-3.712.
[94] UAE's second written submission, para. 275.
[95] Pakistan's written opening statement, paras. 132-134.

sunset review within four months, thus taking a total period of time of just under 16 months. This further confirms that the NTC acted in accordance with the wording as well as the purpose of Article 11.4.

2.99. The UAE further argues that the delay in the sunset review was not justified because the Lahore High Court ruling did not oblige the NTC to suspend the BOPP sunset review. This, according to the UAE, is because that court ruling concerned a different investigation concerning a different product.[96] But this argument ignores the fact that *all* of the NTC's activities had to be halted because the NTC *as a whole* had been declared to have been improperly constituted. The consequences of the incorrect composition of the NTC obviously affected not only one particular investigation, but *all* proceedings pending before the NTC. Thus, under Pakistani law, the NTC simply could not (and *did not*) continue its duties in any pending proceedings from the date of the issuance of the judgment (27 April 2016) until 5 September 2016, when the Commission was properly reconstituted.[97]

2.100. The UAE also claims the NTC continued its work in proceedings other than the BOPP sunset review after the judgment in question had been issued. The UAE points to certain NTC preliminary determinations on 14 April 2016 and 26 April 2016[98], whereas the judgment, according to the UAE, had been issued on 15 March 2016. But this 15 March 2016 date is incorrect. The Lahore High Court judgment was issued on 27 April 2016, and no NTC activity occurred after that date until 5 September 2016.

2.101. For the above reasons, Pakistan requests the Panel to reject the UAE's claim under Article 11.4 of the Anti-Dumping Agreement.

2.13 The UAE's claims under Articles 12.1, 12.2 and 12.3 of the Anti-Dumping Agreement do not fall within the Panel's terms of reference and, even if they do, the Panel should exercise judicial economy on these claims

2.102. The UAE argues that Pakistan acted inconsistently with Article 12.1, 12.2, and 12.3 of the Anti-Dumping Agreement by failing to provide certain information in its notice of initiation and in its notice of Final Determination (including in the attached report).[99]

2.13.1 Pakistan's arguments under Article 6.2 of the DSU

2.103. Pakistan requests the Panel to reject the UAE's claims because the relevant section of the UAE's panel request does not fulfil the requirements of Article 6.2 of the DSU. Thus, this claim does not form part of the Panel's terms of reference.[100] Article 12 contains multiple provisions and obligations. The UAE was required to be particularly explicit and precise in identifying the specific legal documents and aspects of the measures, as well as the legal basis of the claim. Specifically, the UAE was obliged to specify if it perceived that the deficiencies existed in the notices themselves or in the separate reports and was required to clearly set out its claim. However, in its panel request, the UAE merely mentioned Article 12.1. For its claims under Articles 12.2 and 12.3, the UAE merely paraphrased parts of Articles 12.2 and 12.2.2 without specifying which information out of the various aspects of the NTC's definitive and sunset determinations it considered to be inconsistent with those provisions.[101]

2.104. The UAE failed to "plainly connect" the challenged measures with the provisions of the covered agreements claimed to have been infringed. The UAE submits the Appellate Body has adopted this lower standard for complainants to fulfil to the requirements of Article 6.2.[102] Hence, according to the UAE, complainants are not obliged to provide a brief summary of the legal basis in a manner that is sufficient to present the problem clearly (the "how" or "why").[103] The UAE also alleges that it was sufficient for it to paraphrase the provisions of Article 12, notwithstanding the

[96] UAE's opening statement at the substantive meeting, para. 85.
[97] Pakistan's response to Panel Question 94.
[98] See Exhibit ARE-51.
[99] UAE's first written submission, paras. 590-611.
[100] Pakistan's first written submission, paras. 3.728-3.739.
[101] Pakistan's written opening statement, paras. 148-149.
[102] Pakistan's written opening statement, paras. 141-143.
[103] UAE's second written submission, paras. 287-289.

fact that these provisions contain multiple obligations. Moreover, the UAE argues that Pakistan implies that the UAE should have included arguments in support of its claims in the panel request.[104]

2.105. The UAE's argument demonstrates a selective reading of the Appellate Body's findings and conclusions in *Korea – Pneumatic Valves (Japan)*. The Appellate Body has not lowered the "how" or "why" standard to require a complainant to merely "plainly connect" the measure with the provision of the covered agreement claimed to have been infringed. The Appellate Body considers these to standards to be the same.[105] Pakistan also disagrees with the UAE's view that paraphrasing provisions is always sufficient to set out a sufficient legal basis. Rather, the Appellate Body has emphasised that the sufficiency of a panel request must be assessed on a case-by-case basis. Paraphrasing provisions may not be sufficient depending on the circumstances of the case, including the nature, complexity, and specificity of the provision that is alleged to have been violated.[106] But the findings in *Korea – Pneumatic Valves* in respect of Article 12 of the Anti-Dumping Agreement were not appealed by Japan.[107] Thus, the relevant panel findings, are valid and apply to the current case.

2.13.2 The UAE's claims under Articles 12.1, 12.2, and 12.3 of the Anti-Dumping Agreement

2.106. Under Article 12.1, the UAE argues that the Notice of Initiation of the anti-dumping investigation did not contain adequate information on, inter alia, "the basis on which dumping is alleged in the application", as required by Article 12.1.1(iii). The UAE argues that this information had to be contained solely in the Notice of the Initiation, rather than in the Notice read together with the application and initiation memorandum. According to the UAE, neither document constituted a "separate report" that was made readily available, within the meaning of Article 12.1 and footnote 23.[108]

2.107. The UAE's argument is formalistic. The UAE accepts that section 6 of Tri-Pack's Application sets out the basis of the dumping allegation and that section 15 of the NTC's re-initiation memorandum sets out the NTC's dumping analysis. Nor does it deny that both documents were part of the public record. In fact, the UAE itself placed Tri-Pack's application on this dispute's record. The UAE's stance thus elevates form over substance and imposes an unnecessary and formalistic burden on investigating authorities to repeat the substance of publicly available documents obviously linked to the Notice of Initiation.[109]

2.108. Regarding Articles 12.2 and 12.3, the UAE argues that the NTC's Final Determination confirmed that a report had been prepared with this determination, but was not made public. In any event, the UAE argues that that report also failed to set out the findings on fact and law in sufficient detail to support the Final Determination.[110] Pakistan requests the Panel to exercise judicial economy on these purely procedural claims. Previous panels exercised judicial economy after making findings on the substantive provisions underpinning these claims. In any event, the UAE itself has characterised Article 12 claims as "procedural and otherwise rather irrelevant [in] nature".[111] Pakistan thus requests the Panel not to waste time and resources on claims the complainants itself deems "rather irrelevant".[112]

2.109. For all of these reasons, Pakistan requests the Panel to reject the UAE's arguments under Articles 12.1, 12.2, and 12.3 of the Anti-Dumping Agreement.

[104] UAE's second written submission, para. 290.
[105] Appellate Body Report, *Korea – Pneumatic Valves (Japan)*, para. 5.7.
[106] Appellate Body Report, *Korea – Pneumatic Valves (Japan)*, paras. 5.7, 5.9, and 5.25.
[107] See Appellate Body Report, *Korea – Pneumatic Tyres (Japan)*, footnote 53.
[108] UAE's first written submission, para. 602: UAE's second written submission, paras. 292-294.
[109] Pakistan's written opening statement, paras. 155-156.
[110] UAE's second written submission, paras. 295-296.
[111] UAE second written submission, para. 288.
[112] Pakistan's first written submission, paras. 3.748-3.750.

2.14 The Panel should reject the UAE's purely consequential claims under Articles 1 and 18.1 of the Anti-Dumping Agreement and Articles VI:1 and VI:2 of the GATT 1994 or should exercise judicial economy on them

2.110. The UAE's claims under Articles 1 and 18.1 of the Anti-Dumping Agreement and Articles VI:1 and VI:2 of the GATT 1994 are purely consequential in nature and hinge on violations of other substantive provisions of the Anti-Dumping Agreement.[113] Pakistan requests the Panel to exercise judicial economy with respect to these claims, in line with the approach taken by previous panels.[114] However, should the Panel choose to address these claims, Pakistan requests that it reject them, given their consequential nature and that the UAE has failed to prove any violation of the Anti-Dumping Agreement.

3 REQUESTS FOR FINDINGS AND CONCLUSIONS

3.1. Pakistan respectfully requests the Panel to reject all of the UAE's claims and to find no violation of Pakistan's WTO obligations. Pakistan also requests the Panel to reject the UAE's request for suggestions pursuant to Article 19.1 of the DSU. The UAE requests that, in the event of a finding of inconsistency, the Panel should recommend Pakistan to put itself into compliance by withdrawing the anti-dumping measure and to refund the anti-dumping duties collected.[115]

3.2. Pakistan recalls that WTO panels, across all categories of WTO disputes, including disputes about trade remedies, have overwhelmingly refused to accede to requests for a suggestion to withdraw the measure at issue. The main reason has been that the defending Member is entitled to discretion to choose the means of implementation and that, instead of withdrawal of a measure, a modification of the measure was possible. Indeed, it is standard practice in WTO anti-dumping proceedings that a losing WTO Member can choose to implement by correcting the offending part of the measure, while leaving the measure as a whole in place. Pakistan deserves this kind of discretion like all other Members before it. Moreover, no WTO panel has granted a request to suggest the reimbursement of anti-dumping duties. The panel in *Guatemala – Cement II* was one of the few that granted the complainant's (Mexico) request to suggest the withdrawal of the respondent's (Guatemala) anti-dumping measure. However, that panel categorically refused to grant Mexico's request for a suggestion to recommend Guatemala to reimburse the collected anti-dumping duties because of the "important systemic issues" involved.[116]

3.3. Pakistan thus request the Panel to follow the approach taken by other panels and refuse to grant the UAE both is requests for suggestions under Article 19.1 of the DSU.

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[113] UAE's first written submission, paras. 612-621; UAE's second written submission, paras. 298-300.
[114] Pakistan's first written submission, paras. 3.752-3.757.
[115] See UAE's first written submission, paras. 622-628.
[116] Panel Report, *Guatemala – Cement II*, para. 9.7.

ANNEX C

ARGUMENTS OF THE THIRD PARTIES

ANNEX C-1

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS
OF THE EUROPEAN UNION

I. ARTICLES 3.1 AND 5.10 OF THE ANTI-DUMPING AGREEMENT

1. Article 5.10 of the Anti-Dumping Agreement applies only to original investigations covered by Article 5, meaning investigations to determine the existence, degree and effect of any alleged dumping. Subsequent investigations, such as those under Articles 9.3.1 and 9.5, interim and sunset reviews under Article 11 and proceedings under Article 13 of the Anti-Dumping Agreement, are outside the scope of Article 5.10.

2. Therefore, the European Union considers that the duration of the original investigation cannot be cumulated with the duration of the court proceedings and the proceedings on remand.

3. The Anti-Dumping Agreement does not appear to regulate explicitly the duration of the proceedings on remand to rectify errors made during the original investigation. Yet, the European Union would be concerned if those proceedings would take an excessive amount of time. An excessive duration may lead to a remote period of investigation and, depending on the circumstances of each case, to a violation of Article 3.1. In this regard, the time limit provided in Article 5.10 can serve as context as to the period that would be reasonable for proceedings on remand.

4. At the same time, if a Member initiates an investigation having the same scope as a previous closed investigation, Article 5.10 requires that that Member comply with the 18-months' time-limit as of the second initiation.

5. A Member's reliance in the new investigation on data gathered during the first investigation is to be analysed under Article VI:2 of the GATT 1994 and Article 3.1 of the Anti-Dumping Agreement.

6. According to the case law of the Appellate Body,[1] the use of a remote investigation period is not *per se* a violation of Article 3.1. The existence of a violation of Article 3.1 would depend on the specific circumstances of each case.

7. In this case, while the end of the period of investigation precedes the initiation by 22 months, the new investigation appears to be justified by the order of the domestic court to reinitiate the investigation and by the need for an expedited investigation.

8. Further, there is nothing in the Anti-Dumping Agreement to suggest that the periods of review for dumping and injury must necessarily end at the same point in time. Indeed, since there may be a time-lag between the entry of dumped imports and the injury caused by them, it may not be appropriate to use identical periods of review for the dumping and injury analyses in all cases.[2]

9. Because the conditions to impose an anti-dumping duty are to be assessed with respect to the *current situation* the determination of whether injury exists should be based on data that provide indications of the situation prevailing when the investigation takes place.[3] This, of course, does not imply that investigating authorities are not allowed to establish a period of investigation that covers a past period. In order to determine whether injury caused by dumping exists when the investigation takes place, "historical data" may be used. However, that more recent data is likely to provide better indications about current injury.

10. Thus, the European Union considers that there are similar constraints regarding the period of investigation for dumping as for the period of investigation for injury. If the period of investigation

[1] Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice*, paras. 165-166.
[2] Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, para. 7287.
[3] Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice*, paras. 165-166.

for dumping were too remote then the dumping investigation may not relate to the current situation, including the injury analysis.

II. ARTICLE 6.2 OF THE ANTI-DUMPING AGREEMENT

11. The European Union considers that the type of analysis carried out on remand is determinative for the question of whether interested parties have a right to comment pursuant to Article 6.2 of the Anti-Dumping Agreement.

12. In this case, if the NTC simply repeated the initial analysis, it is likely that the interested parties do not have the right to comment. However, if the NTC engaged in an analysis different from the original one, Article 6.2 would require that interested parties be able to comment on that new analysis. The findings of the panel in *Korea — Certain Paper (Article 21.5 – Indonesia)*[4] indicate that, even if the factual basis remains the same, an Investigating Authority that carries out a different analysis in the proceedings on remand may violate Article 6.2 if interested parties are not given the right to comment.

III. ARTICLE 11.4 OF THE ANTI-DUMPING AGREEMENT

13. The word "normally" in Article 11.4 of the Anti-Dumping Agreement appears to mean that a derogation to the 12-month time-limit to conclude an interim and sunset review is possible under certain circumstances. Article 9.3.1, and footnote 20 provide context for the interpretation of the circumstances that could justify a failure to comply with the time-limit set out in Article 11.4.

14. In the present case, a decision of a domestic court ordering the investigating authority to stay anti-dumping proceedings, which in this case impeded the functioning of the NTC, may be considered as a justified failure to comply with the 12-month time-limit provided in Article 11.4.

[4] Panel report, *Korea — Certain Paper (Article 21.5 – Indonesia)*, paras. 6.79-6.80.

ANNEX C-2

INTEGRATED EXECUTIVE SUMMARY OF THE
ARGUMENTS OF JAPAN

I. THE EXISTENCE OF A "CAUSAL NEXUS" IS ESSENTIAL IN A SUNSET REVIEW UNDER ARTICLE 11.3 OF THE ANTI-DUMPING AGREEMENT

1. Japan considers that Article 11.3 of the Anti-Dumping Agreement should be interpreted in light of its ordinary meaning and relevant context, provided mainly by Article VI of the GATT 1994 which lays out the fundamental requirement that there must be a causal link between dumping and injury to a domestic industry if an anti-dumping duty is to be levied on a dumped product. Furthermore, while Articles 3.2 through 3.5 of the Anti-Dumping Agreement are not directly applicable to sunset reviews, they are also relevant as part of the context in which Article 11.3 should be read. Therefore, the necessity of some form of causality does not only exist under Article 3 of the Anti-Dumping Agreement in the form of a causal relationship but is also a requirement to be fulfilled under Article 11.3 of the Anti-Dumping Agreement, in the form of a causal nexus.

II. PRICE COMPARABILITY SHOULD BE ENSURED UNDER ARTICLE 11.3 OF THE ANTI-DUMPING AGREEMENT

2. Since Article 3 of the Anti-Dumping Agreement serves as context for Article 11.3, the requirement of ensuring price comparability under Article 3.2 of the Anti-Dumping Agreement should also be considered in an injury analysis under Article 11.3, as the underlying logic of both provisions is to compare and assess competitive relations and market interactions. While Article 3.2 is not directly applicable to sunset reviews, Japan considers that an investigating authority needs to consider price comparability in any injury analysis. Therefore, the appropriate comparison between dumped imports and like domestic products should be conducted by comparing the products type by type.

3. In the present case, there are two types of BOPP film, namely metallized BOPP and non-metallized BOPP film. An objective examination therefore obliges an investigating authority to assess whether the risk that prices are distorted results from the fact that there were significant differences between the volumes of the two products, the prices of which were being compared.

4. Given that Pakistan has not objected to the UAE's arguments that there are obvious volume and price differences between the two types of BOPP film in the present case, Japan considers it necessary for the Panel to examine whether or not Pakistan appropriately considered the competition of the two products and ensured price comparability.

III. PRICE EFFECTS AND IMPACT ANALYSIS UNDER ARTICLES 3.2 AND 3.4 OF THE ANTI-DUMPING AGREEMENT, RESPECTIVELY, ARE USEFUL IN AN ANALYSIS UNDER ARTICLE 11.3

5. By its terms, Article 11.3 does not identify any specific methodology for the determination of a likelihood of injury. Nonetheless, a consideration of the price effects required under Article 3.2 and the impact analysis required under Article 3.4, while not directly applicable, could be useful in a likelihood of injury determination. Furthermore, a likelihood determination entails a prospective analysis since authorities must seek to resolve what would be likely to occur if the duty were terminated. Seeing as both a consideration of price effects under Article 3.2 and the impact of dumped imports on the domestic industry under Article 3.4 align with the forward-looking character of a likelihood of injury analysis, and the two provisions form part of the relevant context of Article 11.3, they can be used in a sunset review.

IV. THE OBLIGATION ENSHRINED IN THE TERM "CONSIDER" IN ARTICLE 3.2 OF THE ANTI-DUMPING AGREEMENT

6. In Japan's view, the term "consider" in Article 3.2 does not mean that investigating authorities merely look at the price effects but rather that the authorities are required to closely analyze them in their surrounding economic context. This is because investigating authorities are mandated to objectively examine and base their findings on positive evidence as per Article 3.1. Furthermore, the very jurisprudence that Pakistan seems to have misleadingly quoted in paragraphs 3.403, 3.407 and 3.408 of its First Written Submission emphasizes the rigor that is required from an investigating authority in an analysis under Article 3.2 of the Anti-Dumping Agreement. In other words, even though no final determination is required, an investigating authority may not simply ignore evidence that calls into question the explanatory force of the subject imports for significant depression or suppression of domestic prices.

V. THE PROFITABILITY OF A DOMESTIC INDUSTRY SHOULD NOT PRECLUDE A FINDING OF INJURY

7. Japan considers that a Member does not breach the obligations under Article 3.4 of the Anti-Dumping Agreement based on the sole fact that its domestic industry had remained profitable during the POI. Indeed, should the domestic industry remain profitable throughout the POI, it is still possible to establish that, through an analysis of the factors identified in Article 3.4, absent the dumping, the industry would have been even more profitable. Therefore, a lower profitability could also be deemed as constituting a negative impact if analyzed in light of all the other economic factors. The "magnitude of the margin of dumping" may therefore help identify what negative impact the dumped imports had on the profitability of the domestic industry through its downward effect on the price of the domestic like products. By contrast, even in situations in which the domestic industry suffered losses toward the end of the POI, but the consideration of the totality of elements of Article 3.4 indicate that the economic result of the domestic industry would not have improved in the absence of the dumped imports, no negative impact of the dumped imports can be found. Therefore, the profitability of the domestic industry in and of itself, absent any surrounding economic context, should not preclude a finding of injury.

VI. THE TIME LIMITS UNDER ARTICLES 5.10 AND 11.4 OF THE ANTI-DUMPING AGREEMENT DO NOT ENCOMPASS DOMESTIC COURT PROCEEDINGS

8. *First*, Japan does not support the position that the duration of the original investigation should be cumulated with the duration of court and remand proceedings and that, together, they should comply with the 18-month limit under Article 5.10 of the Anti-Dumping Agreement. Article 5.10 of the Anti-Dumping Agreement, taken at face value, does not mention any time limits for court proceedings. *Second*, in similar vein to Article 5.10, Japan is of the view that Article 11.4 of the Anti-Dumping Agreement also does not mention either any time limits for national court proceedings.

9. This position is supported by Article 13 of the Anti-Dumping Agreement which refers to the review of administrative actions relating to final determinations. Indeed, Article 13 makes it clear that court proceedings are not part of the original investigation under Article 5 or of a review under Article 11 and hence of the timeframes enshrined in Articles 5.10 and 11.4 of the Anti-Dumping Agreement.

ANNEX C-3

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS
OF THE UNITED STATES

EXECUTIVE SUMMARY OF U.S. THIRD PARTY SUBMISSION

I. CLAIMS REGARDING JUDICIAL REVIEW AND ARTICLE 5.10

1. Article 5.10 requires that "[i]nvestigations shall, except in special circumstances, be concluded in one year, and in no case more than 18 months, after their initiation". The time frame in Article 5.10 applies to "investigations" only, and not to the judicial review of an investigation or an administering authority's subsequent response to that judicial review.

2. In claiming that Pakistan's investigating authority exceeded the 18-month limitation in Article 5.10, the UAE implies that the 18 months includes the time taken to complete any and all of the following procedural steps: (1) all investigatory activities and determinations made in the normal course by the investigating authorities; (2) the time it takes for a domestic court (or courts) to hear and decide any requests for review of the investigating authorities' determinations; and (3) the investigating authorities' re-examination and re-determination on remand, if necessary. The UAE's interpretation might also extend to (4) any judicial review of the redetermination, (5) any further re-examination or redetermination following a second judicial remand, or even (6) any repetitions of the foregoing steps. Nothing in Article 5.10 would support such an interpretation.

3. Article 13 of the Anti-Dumping Agreement explicitly contemplates the possibility of such additional proceedings after the investigating authorities issue their final determinations in the first instance. Whereas Article 5 of the Anti-Dumping Agreement governs the conduct of "investigations", an entirely separate Article, Article 13, addresses judicial review proceedings. With respect to timing, Article 13 requires only that judicial review proceedings be "prompt". Article 13 does not contain any specific durational requirements for domestic judicial review, nor does it cross-reference the 12-month/18-month deadlines set out in Article 5.10 for completion of investigations.

4. The UAE's interpretation of Article 5.10 thus seeks to impose requirements nowhere stated in the text and indeed appears to be inconsistent with Article 13 of the Anti-Dumping Agreement. The UAE's interpretation thus does not provide a basis for a claim under Article 5.10.

II. CLAIMS REGARDING PROFITABILITY UNDER ARTICLE 3.4

5. A negative material injury determination is not compelled merely because a domestic industry has remained profitable during the period of investigation. As Article 3.4 of the Anti-Dumping Agreement states, "the list [of injury factors] is not exhaustive, *nor can one or several of these factors necessarily give decisive guidance* (emphasis added)". Furthermore, Article 3.4 does not direct an investigating authority to determine if the domestic industry has fallen from profitability to loss. Instead, Article 3.4 requires the authority to evaluate, among other things, the "actual and potential decline in … profits".

6. Therefore, a Member would not breach Article 3.4 based on the sole fact that the domestic industry had remained profitable. Rather, an investigating authority may find that dumped imports have caused material injury to a domestic industry based on factors identified in Article 3.4, including that industry remaining profitable, depending on the specific facts and circumstances of a given case.

III. CLAIMS REGARDING LIKELIHOOD OF INJURY DETERMINATIONS UNDER ARTICLE 11.3

7. While Article 11.3 directs an investigating authority to consider whether "expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury", it is important to recall that Article 11.3 of the Anti-Dumping Agreement does not prescribe what data an investigating

authority must consider in conducting such an examination. And nothing in that Article precludes authorities from analysing both current and historical – including pre-order – data in conducting their analyses. Nor does Article 11.3 indicates that the current condition of the industry must be given specific weight, let alone dispositive weight, in the likelihood of injury analysis. Indeed, through the term "recurrence of … injury", Article 11.3 contemplates a situation in which the domestic industry had ceased to experience injury.

8. Consequently, the Agreement does not support a conclusion that a domestic industry's current market share would compel a negative likelihood-of-injury determination. Rather, the investigating authority may evaluate a variety of available data in determining whether "the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury".

EXECUTIVE SUMMARY OF U.S. THIRD PARTY ORAL STATEMENT

9. The purpose of a dumping investigation is not to test whether foreign exporters may have dumped and caused injury at some point in the past, but whether there is injurious dumping occurring at the time of the filing of the petition and the initiation of the investigation. However, as recognized by the panel in *Mexico – Steel Pipes and Tubes*, while there must be "an inherent real-time link between the investigation leading to the imposition of measures and the data on which the investigation is based", the period of investigation will, necessarily, be from a "past period".

10. The WTO Committee on Anti-Dumping Practices recommended that the period of investigation for dumping investigations should end as "close to the date of initiation as is practicable". While each case must be determined on its own facts, such a time period with recent information would be most likely to provide positive evidence to an investigating authority of the injurious dumping alleged. Data from the period starting after the filing of a petition and initiation of an investigation may suffer from post-petition effects that skew the data.

11. The UAE acknowledges this when it states that the "optimal scenario" is when the "period of investigation ends the day before the date of initiation". However, the UAE goes on to suggest that even in situations where an investigating authority selects a period of investigation as close to the date of initiation as practicable, a measure may breach Article 3.1 if the period of investigation is not sufficiently close in time to the date of imposition of the duty itself. Under the UAE's logic, if a determination were subject to judicial review and remand procedures, the investigating authority could need to undertake a new investigation with a more recent period of investigation for any measure imposed as a result of that remand, in order for the antidumping duty to be consistent with Article 3.1.

12. The UAE's position is contrary to the terms of the Anti-Dumping Agreement and attempts to establish new requirements not set out in that agreement that would lead to unworkable outcomes in practice.

13. First, this position would effectively place limits on the timing of judicial reviews and remands that are found nowhere in the text of the Anti-Dumping Agreement. Second, the UAE's position fundamentally misconceives the role of remands by domestic judicial authorities. The UAE's position would place a significant burden on investigating authorities, not to mention the mechanisms for judicial review in domestic systems, and effectively prevent the timely completion of investigations or the correction of even minor legal errors in remand situations. Similarly, such a rule would deter a petitioning party from seeking judicial review of negative determinations, even where it has a valid basis to do so, out of concern for the time and expense a second investigation would entail. Finally, not only would an investigating authority have to select a new period of investigation, but the authority would likely have to select a new period of investigation that included data predominantly or entirely post-dating the initiation.

EXECUTIVE SUMMARY OF U.S. THIRD PARTY RESPONSES TO QUESTIONS

14. In order to impose an anti-dumping measure, the investigating authority must examine, as part of its initial investigation pursuant to Article 5 of the Anti-Dumping Agreement, a period of time that is as close to the date of initiation as practicable. The United States does not see any exception to this obligation where using older data would simply be more expedient or would otherwise allow the investigating authorities to proceed on an accelerated basis. The panel in *Mexico – Rice*

considered that the pertinent inquiry was whether it was necessary, not whether it was expedient, for the authority to rely on older data. Without establishing other facts, an authority's decision to select a period of investigation based on expediency alone does not justify the use of a stale period of investigation.

15. Numerous provisions in Article VI and the Anti-Dumping Agreement support the interpretation that the dumping seeking to be addressed is one that is currently or presently exists - or will exist in the imminent future. Hence, the purpose of a dumping investigation is not to test whether foreign exporters may have dumped at some point in the past, but whether there is injurious dumping occurring at the time of the initiation of the investigation. Therefore, the period of investigation selected as part of an investigating authority's initial investigation for calculating dumping should, as it is for injury, be "as close to the date of initiation as practicable", based on the circumstances of each case.

16. Article 5.10 of the Anti-Dumping Agreement provides that "investigations shall, except in special circumstances, be concluded in one year, and in no case more than 18 months, after their initiation (emphasis added)". The ordinary meaning of the word "initiation" is defined as "[t]he action of beginning or originating something; the fact of being begun; commencement, origination". Therefore, as so defined, "initiation" does not mean continuation. Based on this ordinary meaning, an investigation into a specific import or set of imports could only be initiated for a second time if any prior investigation was either already terminated or never existed in the first place. Thus, assuming that the first investigation was not ongoing – due to either termination or absence of a valid prior initiation – and that the second initiation met the requirements of Article 5, the investigating authority would need to conclude that investigation within one year (or 18 months) of that later, separate initiation.

17. Article 11.4 states that sunset reviews "shall normally be concluded within 12 months of the date of the initiation of the review". By its terms, the 12 month time limit found in Article 11.4 is not a strict deadline that is applicable in all cases. Rather, Article 11.4 is drafted to permit a review to go beyond this "normal" deadline when circumstances warrant. While such circumstances are not defined in the Anti-Dumping Agreement, the United States submits that a decision of a domestic court ordering the investigating authority to stay anti-dumping proceedings while a judicial review proceeding governed by Article 13 took place is an unusual and infrequent occurrence in a sunset review. Therefore, depending on the particular facts, such an occurrence may permit an investigating authority to complete its review after the 12-month "normal" deadline found in Article 11.4.

18. If the Panel finds in the UAE's favor on any claim, the Panel should provide the recommendation set forth in DSU Article 19.1, that Pakistan bring its measure into conformity with its obligations under the relevant agreements. In general, panels have declined requests to make suggestions under Article 19.1 of the DSU, and for good reason. Article 21.3 of the DSU makes clear that "the choice of means of implementation is decided, in the first instance, by the Member concerned". Here, the UAE is advocating for a specific, retroactive remedy of the sort panels reviewing anti-dumping and countervailing duty measures have avoided. Panels are not experts in national law, and should refrain from attempting to identify ways in which Members can best bring offending measures into conformity with their obligations.