

(b) Pakistan's sunset review determination of 1 December 2016 is also inconsistent with Articles 1 and 18.1 of the Anti-Dumping Agreement.⁹²⁹

7.660. We refer to the conditions under which we may exercise judicial economy.⁹³⁰ The United Arab Emirates' claims under Articles 1, 18.1, VI:1, and VI:2 are merely consequential on the claims we have already reviewed. They challenge the same measures and the same aspects of the same measures as the claims under which we have already reached findings of inconsistency, above. We therefore exercise judicial economy on the United Arab Emirates' claims under Articles 1, 18.1, VI:1, and VI:2.

7.16 The Panel's duty under Article 12.11 of the DSU

7.661. Article 12.11 of the DSU requires that in cases in which "one or more of the parties is a developing country Member":

[T]he panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

7.662. In this dispute, Pakistan has raised Article 12.10 of the DSU⁹³¹, which provides, in relevant part:

[I]n examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation.

7.663. We took account of both parties' status as a developing country Member in adopting and reviewing the Working Procedures and timetable. The Panel's timetable provided Pakistan eight weeks to file its own first written submission after having received the complainant's first written submission, as requested by Pakistan, and it provided the United Arab Emirates five weeks after the organizational meeting to prepare its first written submission, as requested by the United Arab Emirates. We have also taken into account the status of the parties as developing country Members when subsequently revising the timetable and the Working Procedures, including when granting Pakistan's request for an extension to file its second written submission.

8 CONCLUSIONS

8.1. For the reasons set out in this Report, we conclude as follows:

- a. The United Arab Emirates has established that the final determination of 9 April 2015, which ratified the final determination of February 2013, is inconsistent with:
 - i. Article 5.3 of the Anti-Dumping Agreement, because Pakistan did not assure itself that there was sufficient evidence to justify initiation of an investigation;
 - ii. Article 2.1 of the Anti-Dumping Agreement, because Pakistan made a determination of dumping without evidence of current dumping;
 - iii. Article 3.1 of the Anti-Dumping Agreement, because Pakistan did not base its determination of injury on evidence of current injury;
 - iv. Articles 3.1 and 3.2 of the Anti-Dumping Agreement, because Pakistan did not objectively consider whether the volume of dumped imports in absolute terms and relative to domestic production had increased significantly during the POI, and whether

⁹²⁹ United Arab Emirates' first written submission, paras. 612-621; second written submission, paras. 298-300.

⁹³⁰ See para. 7.49 above.

⁹³¹ Pakistan's comments on the proposed timetable and Working Procedures of 17 September 2019.

- the effect of the dumped imports on prices of the like product had been significant price undercutting and significant price depression during the POI;
- v. Articles 3.1 and 3.4 of the Anti-Dumping Agreement, because Pakistan did not evaluate all the injury factors listed in Article 3.4, and did not objectively evaluate the impact of the dumped imports on the state of the domestic industry; and
 - vi. Articles 3.1 and 3.5 of the Anti-Dumping Agreement, because Pakistan based its causation analysis on findings that were inconsistent with Articles 3.1, 3.2 and 3.4, and did not ensure that injury caused by other known factors was not attributed to the dumped imports.
- b. The United Arab Emirates has *not* established that the final determination of 9 April 2015, which ratified the final determination of February 2013, is inconsistent with:
- i. Articles 2.2, 2.2.1, 2.2.1.1, and 2.2.2 of the Anti-Dumping Agreement with regard to the cost data relied upon to determine whether sales were in the ordinary course of trade;
 - ii. Article 2.4 of the Anti-Dumping Agreement with regard to the denial of an adjustment for level of trade;
 - iii. Article 5.10 of the Anti-Dumping Agreement with regard to the duration of the original investigation; and
 - iv. Article 6.2 of the Anti-Dumping Agreement with regard to the adoption, in 2015, of the final determination of 9 April 2015 ratifying the final determination of February 2013.
- c. We exercise judicial economy on the United Arab Emirates' claims that the final determination of 9 April 2015, which ratified the final determination of February 2013, is also inconsistent with Articles 1, 5.2, 5.8, 9.1, 9.3, 11.1, 12.1, 12.2, and 18.1 of the Anti-Dumping Agreement, and Articles VI:1 and VI:2 of the GATT 1994.
- d. The United Arab Emirates has established that the sunset determination of 1 December 2016 is inconsistent with:
- i. Article 11.3 of the Anti-Dumping Agreement, because in determining that dumping and injury were likely to continue or recur, Pakistan relied on a margin of dumping calculated inconsistently with Article 2, failed to rely on positive evidence, did not explain how the data supported its findings and how its findings supported its conclusions; and
 - ii. Article 11.4, because Pakistan did not conclude the sunset review within 12 months from initiation, in the absence of abnormal circumstances within the meaning of this provision.
- e. We exercise judicial economy on the United Arab Emirates' claims that the sunset determination of 1 December 2016 is also inconsistent with Articles 1, 11.1, 12.2, 12.3, and 18.1 of the Anti-Dumping Agreement.

9 RECOMMENDATION AND SUGGESTION

9.1. Pursuant to Article 19.1 of the DSU, we recommend that Pakistan bring its measures into conformity with its obligations under the Anti-Dumping Agreement.

9.2. The United Arab Emirates also asks us to suggest ways in which Pakistan could implement this recommendation. Specifically, the United Arab Emirates asks us to suggest that Pakistan "terminate the duties imposed"⁹³² and "refund the anti-dumping duties collected".⁹³³

9.3. Pursuant to the second sentence of Article 19.1, "[i]n addition to [our] recommendations, [we] may suggest ways in which the Member concerned could implement the recommendations". Thus, we have discretion to suggest ways to implement our recommendation.⁹³⁴

9.4. Many panels before us have declined to exercise this discretion to make suggestions, observing in particular that "the implementation of DSB recommendations and rulings is left, in the first instance, to the discretion of the implementing Member".⁹³⁵ Some panels, however, have chosen to exercise their discretion to suggest ways to implement their recommendations.⁹³⁶ Of these, three WTO panels suggested the revocation of anti-dumping duties, having found inconsistencies that were "of a fundamental nature and pervasive".⁹³⁷ On the other hand, so far, the WTO panels asked to suggest refund of anti-dumping duties have rejected such requests.⁹³⁸

9.5. In the case before us, we have found fundamental and pervasive inconsistencies, extending to the evidence on the basis of which the authority initiated the investigation, the chosen POI for the original investigation, multiple aspects of the determination of injury in the original investigation, and multiple aspects of the sunset determination.

9.6. Because of the fundamental nature and pervasiveness of the inconsistencies we have found, we suggest that Pakistan implement our recommendation by withdrawing the anti-dumping measures it has imposed on BOPP film from the United Arab Emirates. We decline however to suggest that Pakistan refund the anti-dumping duties already paid.

⁹³² United Arab Emirates' first written submission, paras. 623-625.

⁹³³ United Arab Emirates' first written submission, paras. 626-628.

⁹³⁴ See also e.g. Appellate Body Reports, *US – Zeroing (EC) (Article 21.5 – EC)*, para. 466; and *US – Continued Zeroing*, para. 389.

⁹³⁵ See e.g. Panel Report, *Australia – Anti-Dumping Measures on Paper*, para. 8.6.

⁹³⁶ Panel Reports, *Argentina – Poultry Anti-Dumping Duties*, paras. 8.3-8.7; *US – Offset Act (Byrd Amendment)*, para. 8.6; *US – Cotton Yarn*, paras. 8.4-8.5; *Guatemala – Cement II*, paras. 9.4-9.6; *US – Underwear*, paras. 8.1-8.3; *Mexico – Steel Pipes and Tubes*, paras. 8.7-8.12; *Ukraine – Passenger Cars*, paras. 8.7-8.8; *US – Lead and Bismuth II*, para. 8.2; *India – Quantitative Restrictions*, paras. 7.1-7.7; *EC – Bananas III (Article 21.5 – Ecuador)*, paras. 6.154-6.159; *EC – Trademarks and Geographical Indications (Australia)* and *EC – Trademarks and Geographical Indications (US)*, paras. 8.4-8.5; *EC – Export Subsidies on Sugar (Australia)*; *EC – Export Subsidies on Sugar (Brazil)*; and *EC – Export Subsidies on Sugar (Thailand)*, paras. 8.6-8.8.

⁹³⁷ Panel Reports, *Argentina – Poultry Anti-Dumping Duties*, para. 8.6; *Guatemala – Cement II*, para. 9.6; *Mexico – Steel Pipes and Tubes*, paras. 8.9-8.12 (the latter with slightly different language). For the same rationale applied to a safeguard measure, see Panel Report, *Ukraine – Passenger Cars*, para. 8.8. The Panel in *Guatemala – Cement I* had also suggested revocation, but was reversed on other grounds. (Panel Report, *Guatemala – Cement I*, para. 8.6).

⁹³⁸ Panel Reports, *US – Hot-Rolled Steel*, paras. 8.7 and 8.11-8.13; *Guatemala – Cement II*, paras. 9.6-9.7. Similarly, the panel in *US – Softwood Lumber IV (Article 21.5 – Canada)* declined to suggest the refund of countervailing duties. (Panel Report, *US – Softwood Lumber IV (Article 21.5 – Canada)*, paras. 5.6-5.7).