

EGYPT – ANTI-DUMPING DUTIES ON MATCHES FROM PAKISTAN

Request for the Establishment of a Panel by Pakistan

The following communication, dated 9 June 2005, from the delegation of Pakistan to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon instructions from my authorities, I wish to convey the request of the Government of Pakistan for the establishment of a panel pursuant to Article XXIII of the General Agreement on Tariffs and Trade 1994 (the "GATT"), Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement") regarding the imposition by the Arab Republic of Egypt ("Egypt") of definitive anti-dumping duties on imports of matches in boxes from Pakistan under Decree No. 667/2003 dated 18 November 2003, as well as any amendments or extensions to this Decree.¹

On 21 February 2005, Pakistan requested consultations with Egypt under Article XXIII:1 of the GATT, Article 4 of the DSU, and Article 17 of the Anti-Dumping Agreement.² Consultations were held in Geneva on 21 March and 3 June 2005. However, these consultations failed to settle the dispute.

Pakistan considers that Egypt's measures are inconsistent with the provisions of GATT and the Anti-Dumping Agreement described below:

Procedural/Disclosure Issues

1. Egypt acted inconsistently with Articles 6.1, 6.1.3 and 6.4 of the Anti-Dumping Agreement by failing to furnish the application for the investigation to the known Pakistani exporters and the Government of Pakistan.

¹ The measures at issue in this dispute consist of all decisions and determinations by Egypt leading to the imposition of definitive anti-dumping duties on imports of matches in boxes from Pakistan. Other documents published or disclosed by Egypt in the course of its investigation and determination to impose definitive measures include (i) The Final Report of the Ministry of Foreign Trade, Anti-dumping, Subsidy and Safeguard Department, Notice No. (6)/2003 Regarding the Imposition of Definitive Anti-dumping Duties on the Imports of Matches (in Boxes) Exported From or Originating in Pakistan; (ii) The Notice of Initiation No (8) concerning the initiation of the anti-dumping investigation into the dumped imports of matches (in boxes), published in the *Official Gazette* on 11 August 2002; and (iii) The Essential Facts and Conclusions Report of the Investigation provided to the interested parties on 17 April 2003.

² WT/DS327/1, G/L/731, G/ADP/D61/1 (24 February 2005).

2. Egypt acted inconsistently with Articles 6.1, 6.5, 6.5.1 and 6.5.2 of the Anti-Dumping Agreement by granting confidential treatment to information contained in the domestic industry's application without requiring the applicants to provide showing of good cause for such a treatment and without requiring the applicants either to furnish non-confidential summaries "in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence" or to give any indication that such information could not be summarized and the reasons why summarization was not possible.

3. Egypt acted inconsistently with Articles 12.1 and 12.1.1 of the Anti-Dumping Agreement by failing to provide in the public notice of the initiation of the investigation the information required under Article 12.1.1, including the basis on which dumping was alleged in the application and a summary of the factors on which the allegation of injury was based.

4. Egypt acted inconsistently with Articles 6.1, 6.2, 6.4, 6.9 and 6.13 of the Anti-Dumping Agreement by failing to disclose the essential facts under consideration that formed the basis of the decision to impose definitive measures in Egypt's Essential Facts and Conclusions Report and to provide the Pakistani exporters a full opportunity to defend their interests while taking due account of the difficulties faced by them.

5. Egypt acted inconsistently with Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement by failing to provide in the final report containing the determination of dumping, injury and causal link all relevant information on the matters of fact and law and reasons, which led to the imposition of the definitive anti-dumping duty.

Issues Relating to the Determination of Dumping

Mohsin Match Factory (Pvt) Ltd.

6. Regarding the determination of dumping margins for the Pakistani exporter Mohsin Match Factory (Pvt) Ltd. ("Mohsin"), Egypt acted inconsistently with Articles 2.1, 2.2, 2.2.1, 2.2.1.1, and 2.2.2 of the Anti-Dumping Agreement, by using constructed value as the basis for determining the normal value for Mohsin without properly establishing that no sales of the like product were made in the ordinary course of trade or that domestic sales do not permit a proper comparison. In particular, Egypt's treatment of the *entirety* of Mohsin's sales in the domestic market as outside the ordinary course of trade by reason of price is inconsistent with the specific requirements of Articles 2.2, 2.2.1, 2.2.1.1, 2.2.2 of the Anti-Dumping Agreement. Egypt failed to properly establish that *any* sales below per unit costs were made "within an extended period of time, in substantial quantities and at prices which do not provide for the recovery of all costs within a reasonable period of time".

7. Egypt acted inconsistently with Articles 6.6, 6.8 (read with Annex II), and 6.13, as well as Articles 2.2, 2.2.1.1 and 2.2.2 of the Anti-Dumping Agreement, by determining that Mohsin had failed to provide necessary information regarding its costs of production, including selling, general and administrative expenses ("SG&A") and profits during the course of the investigation.

8. Egypt acted inconsistently with Articles 2.2, 2.2.1.1, and 2.2.2 of the Anti-Dumping Agreement, by failing to use data provided by Mohsin regarding its costs of production, including SG&A expenses and profits, and instead using data from other sources in its construction of the normal value for this exporter.

9. Egypt acted inconsistently with Articles 6.6, 6.8 (read with Annex II), and 6.13 of the Anti-Dumping Agreement, by failing to use data provided by Mohsin regarding its costs of production, including SG&A expenses and profits, and instead using data from other sources in its construction of the normal value for this exporter.

10. Egypt acted inconsistently with Articles 6.6, 6.8 (read with Annex II) and 6.13 of the Anti-Dumping Agreement by failing to use special circumspection in its use of cost of production data from other sources to calculate the constructed value, including SG&A expenses and profits, for Mohsin.

11. Egypt acted inconsistently with Articles 2.2, 2.2.1.1, and 2.2.2 of the Anti-Dumping Agreement by failing to use the company's actual data or an other reasonable method to calculate the SG&A expenses and profits for Mohsin.

12. Egypt acted inconsistently with Articles 2.1, 2.2, 2.4, 2.4.1, 6.8 (read with Annex II), and 6.13 of the Anti-Dumping Agreement by failing to properly determine the export price for Mohsin and to make due allowance for differences affecting price comparability claimed by Mohsin, and by failing to make a fair comparison between export price and normal value in determining the dumping margins for Mohsin.

Khyber Match Factory (Pvt) Ltd.

13. Regarding the determination of dumping margins for the Pakistani exporter Khyber Match Factory (Pvt) Ltd. ("Khyber"), Egypt acted inconsistently with Articles 2.2, 2.2.1.1 and 2.2.2, as well as Articles 6.6, 6.8 (read with Annex II), and 6.13, of the Anti-Dumping Agreement, by determining that Khyber had failed to provide necessary information regarding cost of production, including SG&A expenses and profits, during the course of the investigation.

14. Egypt acted inconsistently with Articles 2.2, 2.2.1.1, and 2.2.2 of the Anti-Dumping Agreement, by failing to use data provided by Khyber regarding its costs of production, including SG&A expenses and profits, and instead using data from other sources in its construction of the normal value for this exporter.

15. Egypt acted inconsistently with Articles 6.6, 6.8 (read with Annex II), and 6.13 of the Anti-Dumping Agreement, by failing to use data provided by Khyber regarding its costs of production, including SG&A expenses and profits and instead using data from other sources in its construction of the normal value for this exporter.

16. Egypt acted inconsistently with Articles 6.6, 6.8 (read with Annex II) and 6.13 of the Anti-Dumping Agreement by failing to use special circumspection in its use of data from other sources to calculate the constructed value, including SG&A expenses and profits, for Khyber.

17. Egypt acted inconsistently with Articles 2.2, 2.2.1.1, and 2.2.2 of the Anti-Dumping Agreement by failing to use the company's actual data or an other reasonable method to calculate the SG&A expenses and profits for Khyber.

18. Egypt acted inconsistently with Articles 2.1, 2.2, 2.4, 2.4.1, 6.8 (read with Annex II), and 6.13 of the Anti-Dumping Agreement by failing to properly determine the export price for Khyber and to make due allowance for differences affecting price comparability claimed by Khyber, and by failing to make a fair comparison between export price and normal value in determining the dumping margins for Khyber.

Issues Relating to the Determination of Injury and Causal Link

19. Egypt acted inconsistently with Articles 3.1, 3.2, 3.4, 3.5 and 6.6 of the Anti-Dumping Agreement by using inaccurate information, not based on positive evidence, regarding the volume of imports under investigation in its examination of the volume of the dumped imports, the effect of the

dumped imports on prices in the domestic market and the consequent impact of these imports on domestic producers, as well as in its examination of the causal link between dumped imports and injury.

20. Egypt acted inconsistently with Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement, in its analysis of the price effects of the imports under investigation, by failing to examine whether the dumped imports resulted in *significant* undercutting, suppression or depression of domestic prices.

21. Egypt acted inconsistently with Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement by failing to collect information relating to shipments and other relevant economic factors or indices having a bearing on the state of the industry from all companies included within the definition of the domestic industry and other Egyptian producers.

22. Egypt acted inconsistently with Articles 3.1, 3.2 and 3.4 of the Anti-Dumping Agreement by failing to properly analyse all relevant economic factors and indices having a bearing on the state of the domestic industry in reaching its injury determination.

23. Egypt acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement by failing to properly examine known factors other than dumped imports which at the same time were injuring the domestic industry; including Egypt's failure to examine, *inter alia*: (i) the impact of imports from third countries on the domestic industry, (ii) the effects of the removal of a safeguard measure on the products subject to investigation; and (iii) the effects of financial and managerial difficulties faced by the largest domestic producer.

By imposing anti-dumping measures in the circumstances described above, Egypt has also acted inconsistently with Articles VI:1 and VI:2 of the GATT, as well as Articles 1 and 18 of the Anti-Dumping Agreement. In addition, Pakistan considers that the benefits accruing to it directly or indirectly under the WTO Agreement and the Anti-Dumping Agreement have been nullified or impaired within the meaning of Article XXIII:1(a) of the GATT.

Accordingly, Pakistan requests the establishment of a panel pursuant to Article XXIII of the GATT, Articles 4 and 6 of the DSU, and Article 17 of the Anti-Dumping Agreement.

Pakistan requests that the establishment of a panel in this matter be placed on the agenda of the meeting of the Dispute Settlement Body scheduled for 20 June 2005.
