



**Government of Pakistan
National Tariff Commission**

Report

of

**Conclusion of Second Sunset Review and Termination of Anti-Dumping Duties
Imposed on Dumped Imports of BOPP Films from People's Republic of China,
Sultanate of Oman, Kingdom of Saudi Arabia and United Arab Emirates**

**A.D.C No. 22/2012/NTC/SR-II/2020
July 15, 2021**

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A. INTRODUCTION

The National Tariff Commission (the “Commission”) having regard to the Anti-Dumping Duties Act, 2015 (the “Act”) and the Anti-Dumping Duties Rules, 2001 (the “Rules”) relating to the investigation and determination of dumping of goods into the Islamic Republic of Pakistan (“Pakistan”), material injury to the domestic industry caused by such imports, and imposition of antidumping duties to offset the impact of such injurious dumping, and to ensure fair competition thereof initiated a review under Section 58 of the Act. Section 58 of the Act relates to sunset review of antidumping duties imposed on dumped imports of the product under review.

2 Having regard to the Section 58(1) of the Act, any definitive anti-dumping duty imposed shall be terminated on a date not later than five years from the date of its imposition, however, as per Section 58(3) of the Act, a definitive anti-dumping duty shall not expire if the Commission determines in a review that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury.

3 The Commission has conducted a sunset review of the definitive anti-dumping duties imposed by the Commission on dumped imports of Biaxially Oriented Poly Propylene Film (“BOPP Film”) under Pakistan Customs Tariff (“PCT”) Heading Nos. 3920.2010 and 3920.2030 originating in and/or exported from People’s Republic of China, Sultanate of Oman, Kingdom of Saudi Arabia and United Arab Emirates (the “Exporting Countries”). In terms of Section 62(2) of the Act, a sunset review shall normally be completed within twelve months from its initiation. The Commission received an application from M/s Tripack Films Limited (the “Applicant”) on February 25, 2020 under Section 58 of the Act and initiated this sunset review on July 27, 2020. Therefore, the Commission is required to conclude this review latest by July 26, 2021.

B. BACKGROUND

4. Anti-dumping Duty in Place

4.1 The Applicant filed an anti-dumping application under Section 20 of the Anti-Dumping Duties Ordinance, 2000 (now Anti-Dumping Duties Act, 2015) with the Commission on April 12, 2010 against dumped imports of BOPP Film from the Exporting Countries. The Commission initiated an antidumping investigation (the original investigation) in this case on September 27, 2010. The said initiation was challenged in Islamabad High Court (“IHC”) on July 06, 2011. The IHC issued an injunctive order and the proceedings were stayed. On March 06, 2012, the IHC directed the Commission to proceed afresh with the complaint on the grounds that earlier initiation was not made by the properly constituted Commission. To comply with the order of IHC, the Commission reinitiated the investigation on April 23, 2012 on the basis of application received on April 12, 2010.

4.2 The Commission made final determination of the said antidumping investigation on February 07, 2013 and imposed following anti-dumping duties on dumped imports of BOPP Films

imported from the Exporting Countries for a period of three years w.e.f. August 15, 2012 (the date of imposition of provisional antidumping duties):

Table-I
Anti-dumping Duty Rates

Country	Exporter Name	Anti-Dumping Duty Rates (%)
UAE	Taghleef, UAE	29.70
	All other exporters	57.09
Oman	Taghleef, Oman	22.95
	All other exporters	22.95
China	All exporters	56.80
Saudi Arabia	All exporters	26.91

4.3 In March 2013, the importers filed an appeal before the Antidumping Appellate Tribunal (the "Tribunal") against Commission's decision of imposition of antidumping duties. The Tribunal set aside final determination of the Commission on January 23, 2015 on the grounds of the quorum of the Commission (Quorum Non-Judice) and remanded the case back to the Commission to proceed afresh.

4.4 On April 09, 2015 the properly constituted Commission under National Tariff Commission Ordinance, 2015 re-considered, re-appreciated and re-appraised the facts of the antidumping investigation and the Commission ratified the earlier findings of the Commission regarding standing of the domestic industry, dumping margin, injury to the domestic industry, causal link between dumped imports and consequent material injury to the domestic industry and imposition of definitive antidumping duties. Accordingly, the imposition of definitive antidumping duty vide the Commission's order dated February 04, 2013 was ratified and the imposition of aforementioned antidumping duty was confirmed for a period of three years w.e.f August 15, 2012 till August 14, 2015.

4.5 In terms of Section 58(3) of the Act, a definitive anti-dumping duty shall not expire if the Commission determines, in a review initiated before the date of expiry, that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury and such anti-dumping duty shall remain in force pending the outcome of such a review.

4.6 Consequently, the Commission conducted first sunset review and continued imposition of the antidumping duties @ 22.95% to 57.09% against dumped imports of BOPP Films for another period of five years as a result of conclusion of sunset review on December 01, 2016.

4.7 On January 24, 2018, the United Arab Emirates (UAE) requested consultations with Pakistan pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Disputes Settlement Understanding (DSU), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Articles 17.2 and 17.3 of the Agreement on

Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement), with respect to the antidumping duties imposed at the rate of 29.70% for one UAE exporter, Taghleef Industries LLC (Taghleef), and 57.09% for all other UAE exporters of BOPP Films to Pakistan.

4.8 Consultations were held on March 27, 2018, but did not resolve the dispute. On May 15, 2018, the United Arab Emirates requested the establishment of a panel pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the Anti-Dumping Agreement, with standard terms of reference. Based on this request, in accordance with Article 6 of the DSU, the Dispute Settlement Body (DSB) established a panel at its meeting on October 29, 2018.

4.9 The UAE requested the Panel to declare that Pakistan's final determination of April 9, 2015, which "ratified" the final determination of February 4, 2013, is inconsistent with the relevant provisions of the Antidumping Agreement.

4.10. The UAE further requested the Panel to find that Pakistan's sunset review determination of December 1, 2016 is also inconsistent with the relevant provisions of the Agreement.

C. PROCEDURE

5. The procedure set out below has been followed with regard to this sunset review:

6. Notice of Impending Expiry of Definitive Anti-dumping Duty

While the Panel's proceedings were underway, the Commission published a notice of impending expiry of anti-dumping duties on dumped imports of BOPP Films imported from the Exporting Countries in this case on January 04, 2020, in official Gazette¹ and national press² in accordance with Section 58(2) of the Act.

7. Receipt of Application

The Commission received an application under Section 58 of the Anti-Dumping Duties Act, 2015 (the "Act") on February 25, 2020 (formal receipt date) from the Applicant for continuation of definitive anti-dumping duties imposed on dumped imports of BOPP Film (product subject to anti-dumping duty) originating in and/or exported from the Exporting Countries for another period of 5 years. The application was filed in response to the notice of impending expiry of the anti-dumping duties issued by the Commission, which was published in the Official Gazette and national press on January 04, 2020.

¹ Official Gazette of Pakistan Extra Ordinary dated January 4, 2020.

² "Daily Express Tribune" and "Daily 92 News"

8. Evaluation and Examination of the Application

The examination of the application showed that it met the requirements of Section 58(3) of the Act as it, *prima facie*, contained sufficient evidence of likelihood of continuation or recurrence of dumping of BOPP Film from the Exporting Countries and injury to the domestic industry.

9. Domestic Industry

9.1 Section 2(d) of the Act defines domestic industry as:

“domestic industry” means the domestic producers as a whole of a domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product in such a case “domestic industry” may mean the rest of the domestic producers”.
Explanation.- For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if;

- (i) *one of them directly or indirectly controls the other;*
- (ii) *both of them are directly or indirectly controlled by the same third person; or*
- (iii) *together they directly or indirectly control a third person;*

Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers and for that purpose one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter”.

9.2 As per information provided in the application and gathered by the Commission, the installed production capacity of the Applicant is *** tons per annum. The names of other domestic producers of BOPP Film manufacturing industry and their respective production capacity is given in the following table:

Table-II
Domestic Industry Installed Capacity

Sr. No.	Unit Name	Installed Capacity (MT)
1.	Tri Pack Films Limited, Karachi. (the Applicant)	51
2.	International Packaging Films (Pvt) Limited.	31
3.	Pak Tech*	2
4.	Mac-Pac Films Limited, Karachi.	11
5.	Plastiflex Pvt. Limited, Karachi.	3
6.	Tuff Poly Limited.	2
	Total Production Capacity	100

*Note: it is assumed that the actual production of Pak Tech is equivalent to its installed capacity.

** Note: For the purpose of confidentiality actual figures have been indexed by taking total production capacity of the domestic industry as base.

10. Standing of the Application

10.1 The application fulfills the requirements of Section 24 of the Act which enjoins upon the Commission to assess the standing of the application on basis of the degree of support for or opposition to the application expressed by the domestic producers of the like product.

10.2 In terms of Section 24(1) of the Act, an application shall be considered to have been made by or on behalf of the domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a domestic like product produced by that portion of the domestic industry expressing either support for or opposition to the application. Furthermore, Section 24(2) of the Act provides that no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty five percent of the total production of domestic like product produced by the domestic industry.

10.3 As per the data/information available with the Commission, the Applicant and supporting producers constitute 94.54 percent of the total domestic production of domestic like product during the period from January 2019 to December 2019. Details of production is given below:

Table-III
Detail of Production of Domestic Industry

Sr. No.	Name	Percentage of Total Production	Status
1.	Tri Pack Films Limited, Karachi	54.72	Applicant
2.	Plastiflex Films Pvt. Limited, Karachi	4.44	Supporting
3.	Mac-Pac Films Limited, Karachi	8.75	Supporting
4.	International Packaging Limited, Karachi	26.63	Supporting
5.	Tuff Poly Limited.	2.73	Indifferent
6.	Pak Tech	2.73	Indifferent
TOTAL		100.00	

Source: the Applicant and other supporting industrial units.

10.4 The above table shows that the application fulfills requirements set out in Section 24 of the Act as the Applicant and supporting producers constitute 94.54 percent of the total domestic production. Other units were requested for necessary information and their standing with regard to this sunset review. Units appearing at Serial No. 2, 3 and 4 responded to the Commission's request for information and submitted their data. These units also support the Applicant's stance, so they are treated as units supporting the application in this sunset review.

10.5 On the basis of the above information the Commission has determined that the application was made by the domestic industry as the Applicant and supporting producers represent 94.54 percent of the domestic production of the total production of the domestic industry.

11. Applicant's Views

In the application, the Applicant has submitted, *inter alia*, the following regarding likelihood of continuation or recurrence of dumping and injury to the domestic industry producing BOPP Film:

- i. Volume of dumped imports of the investigated product declined sharply after imposition of and continuation of antidumping duties as a result of original investigation and first sunset review. However, the volume of imports of BOPP Film from other than dumped sources remained in the same range. After imposition of antidumping duties on dumped imports domestic production increased considerably. Thus, imposition and continuation of antidumping duties have not only provided opportunity to the domestic industry to capture the expanded domestic demand, but also encouraged for expansion by way of establishment of new BOPP film manufacturing units. A number of new domestic players made investment in the industry to meet the domestic demand.
- ii. The fact that there are still some exports from the Exporting Countries implies that exporters/foreign producers of these countries are still maintaining their business contacts with the local importers. Therefore, if the antidumping duties are removed, it will not be difficult for the exporters to increase their exports in Pakistan with likelihood of exports at dumped prices.
- iii. Since the major export destinations of the Exporting Countries remained same/similar after imposition of anti-dumping duties, which poses a threat of recurrence of dumped imports from the Exporting Countries, if the antidumping duties imposed are terminated. Hence, the duties imposed on China, Oman, Saudi Arabia and UAE need to be continued.
- iv. Producers in the Exporting Countries have increased their manufacturing capacities. It can also be safely concluded that exporters/producers of BOPP Film in these Exporting Countries have export surplus, which is an indication of likelihood of continuation or recurrence of dumping of the product under review if antidumping duties imposed on dumped imports of the BOPP Film from the Exporting Countries are terminated.
- v. The domestic industry will face price under cutting in case anti-dumping duties are removed, which will likely lead to price depression and price suppression. Further, there is likelihood of potential decline in sales, profits, output, production, capacity utilization, market share, productivity, cash flows, employment and wages etc. in case anti- dumping duties are terminated.

- vi. In case antidumping duties are removed at this point of time, the consequential material injury to the domestic industry is likely to be more severe because it has increased its installed capacity to more than double as compared to its installed production capacity during original POI.

12. Initiation of the Sunset Review

12.1 Upon examination of the application for sunset review received on February 25, 2020 (formal receipt date), the Commission established that it met requirements of Section 58(3) of the Act. Therefore, the Commission initiated sunset review in this case on July 27, 2020 to determine whether expiry of the anti-dumping duties imposed on dumped imports of BOPP Films from the Exporting Countries would be likely to lead continuation or recurrence of dumping and injury.

12.2 In terms of Section 27 of the Act, the Commission issued a notice of initiation of the sunset review in this case, which was published in the Official Gazette³ and national press⁴ on July 27, 2020.

12.3 The Commission also notified to the Embassies of the Exporting Countries in Pakistan, by sending a copy of the notice of initiation of the Sunset Review on July 27, 2020. Copies of notice of initiation were also sent to the exporters and the Applicant on July 27, 2020, in accordance with the requirements of Section 27 of the Act.

13. Product under Review, Domestic Like Product and the like product

13.1 The Product Under Review

13.1.1 The investigated product in the original investigation was defined as Biaxially Oriented Poly Propylene Film ("BOPP Films") imported from the Exporting Countries. It is classified under PCT Heading Nos. 3920.2010 (BOPP film, plain) and 3920.2030 ("BOPP Film, metallized). The Commission determined during original investigation that the BOPP Film of capacitor grade and of thickness up to 7 microns was not being produced by the domestic industry. Therefore, these grades of BOPP Film were excluded from scope of the investigated product. During current sunset review, an importer of BOPP Film namely Khawaja Electronics stated that domestic industry is not producing Hazy BOPP Film. Khawaja Electronics was asked to provide Technical Data Sheet and samples of Hazy BOPP Film. The same were shared with the Applicant and supporting producers. The Applicant and other supporting producers informed that they are not producing Hazy BOPP Film. Thus, product under review for this sunset review is defined as the BOPP Film imported from the Exporting Countries of thickness of 8 microns or above excluding capacitor grade BOPP Film and Hazy BOPP Film.

13.1.2 The product under review has large number of end-use applications for the purpose of

³ Official Gazette of Pakistan Extra Ordinary dated July 27, 2020.

⁴ "Daily Pakistan Today" and "Daily Dunya News"

packaging, including confectionery, biscuits, soap, processed food items, tobacco, ice bars, candies, tea, garments and gift wrappers etc.

13.1.3 Following table shows tariff structure of the BOPP Film during the POR:

Table-IV
Tariff Structure

Year	Customs Duty
Jan to Dec 2017	20%+1%
Jan to Dec 2018	20%+1%
Jan to Jun 2019	20%+2%
Jul to Dec 2019	20%+7%

Source: Federal Board of Revenue

13.2 Domestic Like Product

13.2.1 The domestic like product is BOPP Film of thickness of 8 micron or above microns excluding capacitor grade BOPP Film and Hazy BOPP Film, produced by the domestic industry. It is classified under PCT Heading Nos. 3920.2010 and 3920.2030. Domestic like product is also used for the same purposes as the product under review is used.

13.2.2 Domestic like product is mainly used for large number of end-use applications for the purpose of packaging including confectionery, biscuits, soap, processed food items, tobacco, ice bars, candies, tea, garments and gift wrappers etc.

13.3 Like Products

13.3.1 In order to establish whether the product under review and the domestic like product are like products as contended by the Applicant, the Commission has reviewed all the relevant information received/obtained from various sources including the Applicant in following terms:

- i. The basic raw materials used in the production of the product under review and the domestic like product are the same/similar;
- ii. Both the products (the product under review and the domestic like product) are produced with a similar manufacturing process;
- iii. Both the products have similar appearance;
- iv. Both the products are used for same purposes as they are mainly used for packaging purposes including confectionery, biscuits, soap, processed food items, tobacco and tea etc;

- v. Both the products are classified under the same PCT Heading Nos. 3920.2010 and 3920.2030.

13.3.2 In the light of the above, the Commission has determined that the product under review and the domestic like product are like products.

14. **Period of Review (“POR”)**

The Commission sought information of last three years i.e. from January 01, 2017 to December 31, 2019 from the Applicant, other domestic producers and exporters/foreign producers of the Exporting Countries. Therefore, the POR for this sunset review was from January 01, 2017 to December 31, 2019.

15. **Verification of the Information**

In order to verify information/data provided by the Applicant and other domestic producer and to obtain further information (if any), officers of the Commission conducted on-the-spot investigation at premises of the Applicant and other domestic manufacturer i.e. Plastiflex Pvt. Limited from October 05-10, 2020. Report of on-the-spot investigation was provided to the Applicant and Plastiflex Pvt. Limited in confidential and non-confidential version. Non-confidential version of on-the-spot report was made available to other interested parties by placing the same in the public file.

16. **Confidentiality**

In terms of Section 31 of the Act, any information, which is marked confidential by the interested parties in their submissions and considered confidential by the Commission, shall, during and after review be kept confidential in accordance with Section 31 of the Act. However, non-confidential summaries of the confidential information have been placed on the Public File for the review and copying by the interested parties.

17. **Public File**

The Commission, in accordance with Rule 7 of the Rules, established and maintained a public file at its office. This file remains available to the interested parties for review and copying from Monday to Thursday between 1100 hours to 1300 hours throughout the sunset review. This file contains non-confidential versions of the application, responses to the questionnaires, submissions, notices, on-the-spot investigation report, correspondence, and other documents for disclosure to the interested parties.

18. Hearing

A hearing in this sunset review was held on May 26, 2021 in accordance with Rule 14 of the Rules. Submissions of the interested parties during the hearing and record note of the hearing was made available to all interested parties by placing the same on the public file.

19. TERMINATION OF DEFINITIVE ANTIDUMPING DUTIES

19.1 The Government of UAE filed a written request for consultation with Pakistan regarding the imposition of antidumping duties on the exporters/producers of BOPP Film from UAE in the WTO Dispute Settlement Body pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Disputes Settlement Understanding (DSU), Article XXII:1 of the GATT 1994, and Articles 17.2 and 17.3 of the Anti-Dumping Agreement. On May 15, 2018, the Government of the UAE requested for establishment of a Panel pursuant to Article 6 of the DSU. The DSB established a Panel at its meeting held on October 29, 2018. The Panel report was issued on January 18, 2021.

19.2 The panel gave its findings with regard to the Final Determination in original investigation and first sunset review conducted by the Commission. The Panel held that there was a significant temporal gap of two years between the POI and initiation of original investigation. The Commission based its determination on an outdated POI and evidence of dumping and injury. It failed to make its determination in terms of current dumping and current injury. Due to the existence of such temporal gap the Panel determined that Pakistan's determination was inconsistent with several Articles of the Anti-dumping Agreement.

19.3 Panel also held that Pakistan had acted inconsistent with Article 5.3 because such temporal gap had prejudiced the accuracy and adequacy of the evidence provided to initiate the investigation. The outdated data has also rendered the dumping margin inconsistent with Article 2.1 of the agreement. According to the Panel, Pakistan chose not to update its evidence or data, neither did Pakistan seek to update its data from relevant interested parties.

19.4 Article 3.1 requires an investigating authority to base its evidence on relevant data and positive evidence. However, the Commission had based its finding of injury on outdated data and resultantly the panel found that Pakistan had failed to establish current injury and failed to comply with the test of relevancy. The Panel further found that Pakistan had acted inconsistently as it failed to evaluate the magnitude of dumping margin. It did not elaborate as to how the negative impact on the domestic industry was attributable to dumping.

19.5 Pakistan has filed an appeal before the Appellate Body established by the DSB. An appeal before the Appellate Body shall be limited to issues of law covered in the panel report and legal interpretations developed by the Panel. Pakistan has challenged in its appeal before the Appellate Body the Panel's legal interpretations on Articles 3.1, 3.4, 3.5 and 11.3 of the Agreement on Anti-dumping only. However, Pakistan has to implement the recommendations of the WTO Panel as it

acted inconsistently with Articles 2.1, 2.2, 2.2.1, 2.2.2, 3.2, 5.1, 5.3, 5.8, 5.10, 9.1, 9.3, 11.1 and 11.4 of the Agreement on Antidumping. The Panel suggested that Pakistan may bring its measures into conformity with its obligations under the Anti-Dumping Agreement by withdrawing the antidumping measures on imports of BOPP Film.

19.6 In view of the foregoing, the Commission notes that proceedings of sunset review are based on the original investigation and first sunset review. To implement the recommendation of WTO Panel regarding original investigation and first sunset review, the Commission has decided to conclude this sunset review and terminate antidumping duties imposed on imports of BOPP Film originating in/and or exported from the Exporting Countries.

(Mr. Muhammad Saleem)
Member
July 15, 2021

(Mrs. Anjum Assad Amin)
Member
July 15, 2021

(Mr. Abdul Khaliq)
Member
July 15, 2021

(Mr. Tipu Sultan)
Member
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(Mrs. Robina Ather)
Chairperson
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