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**EUROPEAN COMMUNITIES – DEFINITIVE ANTI-DUMPING MEASURES
ON CERTAIN IRON OR STEEL FASTENERS FROM CHINA**

RECOURSE TO ARTICLE 21.5 OF THE DSU BY CHINA

Request for the Establishment of a Panel

The following communication, dated 5 December 2013, from the delegation of China to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

The Government of China hereby requests the establishment of a panel pursuant to Articles 6 and 21.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement") and paragraph 1 of the *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding between China and the EU*¹ with respect to the issues identified below.

1. BACKGROUND TO THIS REQUEST

1. On 28 July 2011, the Dispute Settlement Body ("DSB") adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, in *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (WT/DS397) (*EC – Fasteners*).²

2. These reports concluded that Article 9(5) of Council Regulation (EC) No. 1225/2009 of 30 November 2009 (the "Basic AD Regulation") was inconsistent "as such" with Article 6.10, Article 9.2 and Article 18.4 of the AD Agreement and Article XVI:4 of the Agreement establishing the World Trade Organization ("WTO Agreement") and that Council Regulation (EC) No. 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in China was inconsistent with several requirements of the AD Agreement. In accordance with these reports, the DSB recommended that the EU bring its measures found to be inconsistent with the AD Agreement and the WTO Agreement into conformity with its obligations under those Agreements.

3. On 18 August 2011, the EU informed the DSB that it intended to implement the recommendations and rulings of the DSB in a manner that respects its WTO obligations within a reasonable period of time.³ The EU reconfirmed this intention at the DSB meeting of 2 September 2011.⁴

4. By communication of 19 January 2012, China and the EU informed the DSB that they had reached an agreement, pursuant to Article 21.3(b) of the DSU, as to the reasonable period of time for the implementation of the DSB recommendations and rulings in that case.⁵ Pursuant to the

¹ WT/DS397/16.

² WT/DSB/M/301.

³ WT/DS397/12.

⁴ WT/DSB/M/302.

⁵ WT/DS397/14.

agreement, the reasonable period of time was 14 months and two weeks as from the date of adoption of the DSB recommendations and rulings. The reasonable period of time thus ended on 12 October 2012.

5. On 25 October 2012, China and the EU informed the DSB that they concluded "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding."⁶ Paragraph 1 of these procedures provides that if China considers that the situation described in Article 21.5 of the DSU exists, it will request that the EU enter into consultations with China which shall be held within 15 days from the date of the receipt of the request and that after this 15-day period has elapsed, China may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time.

6. On 30 October 2013, China initiated procedures under Article 21.5 of the DSU by requesting consultations with the EU. The request was circulated as document WT/DS397/17 on 1 November 2013.

7. Consultations were held on 27 November 2013. They have allowed a better understanding of each party's position. They have failed, however, to settle the dispute. Accordingly, "there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB within the meaning of Article 21.5 of the DSU.

2. IMPLEMENTATION ACTION DECLARED BY THE EUROPEAN UNION

8. On 11 October 2012, the EU stated⁷ that it had adopted measures necessary to comply with the recommendations of the DSB and, in particular, identified the following measures.

9. Regarding the recommendations and rulings of the DSB relating to Article 9(5) "as such" of Council Regulation (EC) No. 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (the "Basic AD Regulation"), the EU indicated that it had adopted Regulation (EU) No. 765/2012 of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No. 1225/2009 on protection against dumped imports from countries not members of the EC.⁸ Regulation (EU) No. 765/2012 modified Article 9(5) of the Basic AD Regulation which had been found by the Appellate Body to be inconsistent with Articles 6.10, 9.2 and 18.4 of the AD Agreement and Article XVI:4 of the WTO Agreement.

10. As to the recommendations and rulings of the DSB relating to Council Regulation (EC) No. 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in China, a review was initiated by the publication of a Notice of Initiation in the Official Journal of the European Union on 6 March 2012.⁹ The review led to the adoption of Council Implementing Regulation (EU) No. 924/2012 of 4 October 2012¹⁰ amending Regulation (EC) No. 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, which had been found by the Panel and the Appellate Body to be inconsistent with Articles 6.10, 9.2, 6.4, 6.2, 2.4, 4.1, 3.1, 3.2, 3.5, 6.5 and 6.5.1 of the AD Agreement.

⁶ WT/DS397/16.

⁷ WT/DS397/15/Add.3.

⁸ Regulation (EU) No. 765/2012 of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No. 1225/2009 on protection against dumped imports from countries not members of the EC, OJEU L 237, 3.9.2012, p.1.

⁹ Notice regarding the anti-dumping measures in force on imports of certain iron or steel fasteners originating in the People's Republic of China, following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organization on 28 July 2011 in the *EC – Fasteners* dispute (DS397), OJEU C 66, 6.3.2012, p. 29.

¹⁰ Council Implementing Regulation (EU) No. 924/2012 of 4 October 2012 amending Regulation (EC) No. 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, OJEU L 275, 10.10.2012, p. 1.

3. MEASURES AT ISSUE AND CLAIMS RAISED IN THESE PROCEEDINGS

11. China considers that the measures taken by the EU have failed to bring the EU into compliance with its obligations under the AD Agreement and the GATT 1994. In particular, China considers that the measure taken by the EU to implement the recommendations and rulings of the DSB in relation to the anti-dumping duties on imports of certain iron or steel fasteners originating in China through Council Regulation (EU) No. 924/2012 of 4 October 2012 does not fully and correctly implement the recommendations and rulings of the DSB and that it is not consistent with various provisions of the AD Agreement and of the GATT 1994 including:

- (1) Article 6.5 of the AD Agreement because the EU treated information concerning the products sold by the Indian producer as confidential in the absence of good cause shown and Article 6.5.1 of the AD Agreement to the extent that the EU failed to ensure that the Indian analogue producer provided non-confidential summaries of the information provided on an allegedly confidential basis in sufficient detail to enable a reasonable understanding of the substance of such information;
- (2) Articles 6.4 and 6.2 of the AD Agreement because the EU failed to provide to the Chinese interested parties a full opportunity for the defence of their interests and because the EU did not provide timely opportunities for them to see all information that was not confidential as defined in Article 6.5, that was relevant to defend their interests and that was used by the authority in the anti-dumping investigation with regard to, *inter alia*, the products sold by the Indian producer;
- (3) Article 6.1.2 of the AD Agreement because the evidence presented by the Indian producer concerning its products has not been made available promptly to the Chinese interested parties participating in the investigation;
- (4) Article 2.4 of the AD Agreement because the EU failed to indicate to the Chinese interested parties what information was necessary to ensure a fair comparison, in particular since the EU failed to provide information on the products sold by the Indian producer which was used for the normal value determination and since the EU failed to indicate to the Chinese interested parties what information was necessary to substantiate their requests for adjustments;
- (5) Article 2.4 of the AD Agreement and Article VI:1 of the GATT 1994 because the EU failed to make a fair comparison between the export price and the normal value and because the EU failed to make allowances for differences affecting price comparability;
- (6) Article 2.4 of the AD Agreement because the EU failed to ensure that the export price of standard fasteners manufactured by the Chinese exporting producers was not compared to the normal value of special fasteners;
- (7) Articles 2.1, 2.4, 2.4.2 and 9.3 of the AD Agreement and Article VI:1 and Article VI:2 of the GATT 1994 because the EU failed to calculate a dumping margin on the basis of all comparable export transactions and in imposing anti-dumping duties on this basis; and
- (8) Articles 4.1 and 3.1 of the AD Agreement because the EU re-defined the domestic industry by merely using the data of the EU producers which had come forward within the deadline laid down in paragraph 6(b)(i) of the Notice of Initiation of the original investigation and thereby failed to remedy the self-selection process imposed by its approach.

4. CONCLUSION

12. China requests that a panel be established pursuant to Article 21.5 of the DSU with standard terms of reference, as set forth in Article 7 of the DSU, and asks that this request be placed on the agenda of the DSB meeting which is scheduled to take place on 18 December 2013. Pursuant to Article 21.5 of the DSU, China also requests that, if possible, the DSB refer the matter to the original Panel.

13. Pursuant to paragraph 2 of the Agreed Procedures between China and the EU, China notes that the EU is required to accept the establishment of the panel at the first DSB meeting at which China's request for the establishment of an Article 21.5 panel appears on the agenda.
