

**CHINA – DEFINITIVE ANTI-DUMPING DUTIES
ON X-RAY SECURITY INSPECTION EQUIPMENT
FROM THE EUROPEAN UNION**

Request for Consultations by the European Union

The following communication, dated 25 July 2011, from the delegation of the European Union to the delegation of China and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The European Union ("EU") hereby requests consultations with the Government of the People's Republic of China ("China") pursuant to XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 17.3 of the Agreement on Implementation of Article VI of the GATT 1994 ("*Anti-Dumping Agreement*") and Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). The issues which the European Union would like to raise in the course of the consultations include, but are not limited to, the following measure:

- the imposition of definitive anti-dumping duties on x-ray security inspection equipment from the European Union, pursuant to Ministry of Commerce of the People's Republic of China, Notice No. 1(2011), including its annex.

The EU considers the measure at issue to be inconsistent, among others, with China's obligations under the following provisions of the *Anti-Dumping Agreement* and the GATT 1994:

1. Articles 6.1, 6.2, 6.4 and 6.5 of the *Anti-Dumping Agreement* because China failed to provide timely opportunities for all interested parties to see all non-confidential information relevant to the defence of their interests with regard to, *inter alia*, the methodology used to calculate the dumping margin including the adjustments made to the export price and the methodology used to calculate the residual duty as well as the material injury analysis.
2. Article 6.5.1 of the *Anti-Dumping Agreement* because China failed to ensure the provision of non-confidential summaries of confidential information or, where provided, failed to give summaries in sufficient detail to enable a reasonable understanding of that information with regard to, *inter alia*, the calculation of the dumping margin as well as the price analysis in the injury investigation.
3. Article 6.9 of the *Anti-Dumping Agreement* because China failed to provide interested parties with information about the essential facts under consideration which form the basis for the decision to impose definitive anti-dumping measures. In particular,

inter alia, China did not fully disclose the essential facts, which form the basis of the dumping margin and injury determination, notably with regard to the price analysis.

4. Article 12.2.2 of the *Anti-Dumping Agreement* because neither in its public notice of the imposition of definitive measures, nor in a separate report, China set forth sufficiently detailed explanations for the definitive determinations on the dumping margin and injury, together with references to the matters of fact and law which have led to arguments being accepted or rejected. In particular, China failed to include in relation to the margins of dumping established, a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and normal value (Article 12.2.1(iii) of the *Anti-Dumping Agreement*); considerations relevant to the injury determination (Article 12.2.1(iv) of the *Anti-Dumping Agreement*), and with regard to the main reasons leading to the determination (Article 12.2.1(v) of the *Anti-Dumping Agreement*).
5. Article 2.4 of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994 because China failed to make a fair comparison between the export price and the normal value and did not make the appropriate adjustments to the export price by deducting also non relevant expenses.
6. Articles 3.1 and 3.2 of the *Anti-Dumping Agreement*, because China failed to make an objective examination, on the basis of positive evidence, of the effect of the dumped imports on prices in the domestic market for like products as defined in Article 2.6 of the *Anti-Dumping Agreement*. In particular, it appears from the very limited information disclosed by the Chinese authorities that the finding that EU imports had the effect of undercutting and depressing the price of domestic products is not based on an objective examination of positive evidence. Although the Chinese authorities defined the scope of the investigation as including x-ray security inspection equipment of an energy level above 300KeV (high energy scanners), exports from the EU consisted exclusively of "low energy scanners". These two categories of scanners have very different physical characteristics, uses and prices. In addition, the Chinese authorities included in the scope of the investigation also automated explosive detection systems (EDS) scanners, which differ from other low energy scanners by reason of their higher image quality and performance standards and which are exported from the EU to China but not produced in China. Yet the prices of EU imports appear to have been compared to the prices of domestic high energy scanners or to average domestic prices for all scanners, despite the manifest differences between the two categories of products and within the category of "low energy scanners" between EDS scanners and the other "low energy scanners".
7. Articles 3.1 and 3.4 of the *Anti-Dumping Agreement* because China failed to make an objective examination, on the basis of positive evidence, of the effect of the dumped imports on prices in the domestic market for like products and the consequent impact of these imports on domestic producers of such products, including the factors listed in Article 3.4, as the overwhelming majority of injury indicators were positive or showed positive trends.
8. Articles 3.5 of the *Anti-Dumping Agreement* and Article VI:6(a) of the GATT 1994 because China failed to make an objective determination, on the basis of all relevant evidence before the authorities, that the dumped imports were, through the effects of dumping, causing injury. The causality determination is flawed because it is based on

findings of price undercutting and price depression by EU imports which are themselves not based on an objective examination of positive evidence. Moreover, China did not consider other relevant factors having a bearing on the state of the industry and/or affecting the domestic prices. China included in the scope of the investigation x-ray security inspection equipment of an energy level above 300KeV (high energy scanners) which were not exported from the EU to China. Therefore, any injury suffered in respect of "high energy scanners" cannot be attributed to EU imports. In addition, the Chinese authorities included in the scope of the investigation also automated explosive detection systems (EDS) scanners, which differ from other "low energy scanners" by reason of their higher image quality and performance standards and which are exported from the EU to China but not produced in China. Yet, China's determination of causality fails to distinguish between the two categories of scanners, and within the category of "low energy scanners" between EDS scanners and the other "low energy scanners".

The European Union reserves the right to address additional measures and claims under other provisions of the WTO Agreement regarding the above matters during the course of the consultations.

The European Union looks forward to receiving in due course a reply from China to this request. The European Union is ready to consider with China mutually convenient dates to hold consultations in Geneva.
