

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

Request for the Establishment of a Panel by the European Union

The following communication, dated 8 December 2011, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 25 July 2011 the European Union ("EU") requested consultations with the Government of the Peoples' Republic of China ("China") pursuant to Article 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") with respect to 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 European Union held consultations with China on 19 September and 18 October 2011. Those consultations unfortunately did not resolve the dispute.

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

1. Articles 6.2, 6.4 and 6.5.1 of the *Anti-Dumping Agreement* because China failed to ensure that interested parties provided non-confidential summaries of confidential information or, where provided, that the summaries were in sufficient detail to enable a reasonable understanding of the substance of the information submitted with regard to (i) the existence of dumping, including the establishment and comparison of the normal value and the export price; and (ii) the existence of injury, including the effects of dumped imports on prices, the state of the domestic industry and the causal relationship between the dumped imports and the injury allegedly suffered by the domestic industry. In doing so, China failed to provide a timely and full opportunity for all interested parties to see all information that is not confidential as defined by Article 6.5 of the *Anti-Dumping Agreement* and that was relevant to defend their interests, and that was used by the authority in the anti-dumping investigation, and to prepare presentations on the basis of this information for the defence of their interests.

2. Articles 6.2, 6.4 and 6.9 of the *Anti-Dumping Agreement* because China failed to provide interested parties with information about the essential facts under consideration which would form the basis for the decision to impose definitive anti-dumping measures. In particular, China did not fully disclose the essential facts, which form the basis for the determination of the dumping margin of the

EU cooperating producer, including the calculation of the normal value and the adjustments made to the export price, and the determination of the residual duty. China also failed to disclose the essential facts that formed the basis for the determination of injury, including the analysis of the effects of dumped imports on prices, the state of the domestic industry and the causal relationship between the dumped imports and the injury suffered by the domestic industry. In doing so, China failed to provide a timely and full opportunity for all interested parties to see all information that was relevant to defend their interests, and that was used by the authority in the anti-dumping investigation, and to prepare presentations on the basis of this information for the defence of their interests.

3. 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 dumping and injury, together with references to the matters of fact and law which led to arguments being accepted or rejected. Specifically, China failed to provide: a) 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*); b) all the considerations relevant to the injury determination as set out in Article 3 of the *Antidumping Agreement* (Article 12.2.1(iv) of the *Anti-Dumping Agreement*); and c) the main reasons leading to the determination (Article 12.2.1(v) of the *Anti-Dumping Agreement*).

4. 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. Specifically, it appears from the very limited information disclosed by the Chinese authorities that the finding that EU imports had the effect of undercutting and suppressing and/or depressing the price of domestic products is not based on an objective examination of positive evidence because it failed to take into account the differences between various types of products covered by the investigation.

5. 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.

6. Articles 3.1 and 3.5 of the *Anti-Dumping Agreement* 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 suppression and/or depression by EU imports which are themselves not based on an objective examination of positive evidence. Moreover, China did not consider all known relevant factors other than dumped imports having a bearing on the state of the industry and/or affecting the domestic prices.

Accordingly the European Union respectfully requests that, pursuant to Article 6 of the *DSU* and Article 17.4 of the *Anti-Dumping Agreement*, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the *DSU*.

The European Union asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 19 December 2011.
