

WORLD TRADE ORGANIZATION

WT/DS452/1
G/L/1008
G/SCM/D95/1
G/TRIMS/D/34
7 November 2012

(12-6120)

Original: English

EUROPEAN UNION AND CERTAIN MEMBER STATES – CERTAIN MEASURES AFFECTING THE RENEWABLE ENERGY GENERATION SECTOR

Request for Consultations by China

The following communication, dated 5 November, from the delegation of China to the delegations of the European Union, Greece and Italy, and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the European Union (the "EU"), the Republic of Italy ("Italy") and the Hellenic Republic ("Greece") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Articles XXII and XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Articles 4.1 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), and Article 8 of the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement") regarding certain measures affecting the renewable energy generation sector. These measures include but may not be limited to domestic content restrictions relating to the feed-in tariff programs of EU Member States including but not limited to Italy and Greece. The measures appear to have been promulgated under the powers delegated to EU Member States by, *inter alia*, Directive 2009/28/EC of the European Parliament and of the Council "on the promotion of the use of energy from renewable sources".

The issues which China would like to raise in the course of the consultations include, but are not limited to, the following measures:

- 1) Decree of the Ministry of Economic Development of Italy of 5 July 2012: Implementation of Article 25 of the Legislative Decree of 3 March 2011, n. 28, for the incentivizing of the production of electrical energy from photovoltaic solar installations, as published in the 10 July 2012 edition of the Official Gazette of the Republic of Italy, n. 159, Supplement n. 143 ("*Quinto Conto Energia*" or "Fifth Energy Bill"), generally, but including in particular Articles 4(5)(d), 5(2)(a) and 2(1)(v).
- 2) Decree of the Ministry of Economic Development of Italy of 5 May 2011: Implementation of Article 25 of the Legislative Decree of 3 March 2011, n. 28, for the incentivizing of the production of electrical energy from photovoltaic solar installations, as published in the 12 May 2011 edition of the Official Gazette of the Republic of Italy, n. 109, ("*Quarto Conto Energia*" or "Fourth Energy Bill"), generally, but including in particular Article 14(1)(d);

- 3) All measures relating to the promulgation and implementation of items 1) and 2), including but not limited to:
 - i) The Italian Legislative Decree of 3 March 2011, for the incentivizing of the production of electrical energy from photovoltaic solar installations, generally, and Article 25(10) thereof, specifically;
 - ii) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 "on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC";
 - iii) European Commission Decision 2009/548/EC of 30 June 2009 "establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC of the European Parliament and of the Council";
 - iv) The 7 August 2012 version of the "Implementing Rules" pertaining to, *inter alia*, the administration of the Italian Feed-In Tariff, promulgated by the Italian *Gestore Servizi Energetici (Regole Applicative per l'Iscrizione ai Registri e per l'Accesso alle Tariffe Incentivanti)*, generally, but including in particular Article 4.4 ("Premium for installations that use main components produced within EU/EEA States"), and all pertinent past and future versions thereof.
- 4) Greek Law 4062/2012 (FEK A'70/30.03.2012) of 27 March 2012 on the "Development of the Athens former international airport Hellinikon - Project HELIOS - Promotion of the use of energy from renewable sources (Integration of Directive 2009/28/EC) Sustainability criteria of biofuel and bioliquids (integration of Directive 2009/30/EC)" generally, and Article 39, paragraph 12 thereof in particular.
- 5) All measures relating to the promulgation and implementation of item 4), including but not limited to:
 - i) Items 3(ii) and 3(iii), listed above;
 - ii) The primary Greek legislation on renewable energy sources, i.e. Act No. 3468/2006 on "Electricity Production from Renewable Energy Sources ", and all amendments thereto, including but not limited to Act Nos. 3851/2010, on "Accelerating the Development of Renewable Energy Sources to Combat Climate Change and other provisions regulating matters which fall in the competence of the Ministry of Environment, Energy and Climate Change", and 4001/2011 on "Energy Markets of Electricity and Natural Gas";
 - iii) Any ministerial or administrative decision setting out the precise eligibility criteria in connection with the measure, whether or not yet promulgated.
- 6) Any amendments, revisions or extensions of any of the foregoing, any replacement measures, any renewal measures, any implementing measures, and any related measures, whether or not they have already been promulgated.

China considers that the above-mentioned measures are inconsistent, both as such and as applied, with, among others, the following obligations under the following provisions:

- Article III:1 of the GATT 1994, because the measures are laws, regulations and requirements affecting the internal sale of products in such a way that they afford protection to domestic production;
- Article III:4 of the GATT 1994, because certain measures accord less favorable treatment to imported equipment for renewable energy generation facilities over like products produced in the EU and the European Economic Area ("EEA");
- Article III:5 of the GATT 1994 because the measures constitute quantitative regulations relating to the use of products in amounts or proportions which requires, directly or indirectly, that a specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources;
- Article I of the GATT 1994, because certain domestic content restrictions impede other WTO Members, including China, from enjoying the full benefit of the measures while other WTO Members do not face similar restrictions. These include but are not limited to certain WTO Members which are Members of the European Economic Area (EEA) but not the EU;
- Articles 3.1(b) and 3.2 of the SCM Agreement, because the measures include subsidies within the meaning of Article 1.1 of the SCM Agreement that are prohibited as they are provided contingent upon the use of domestic over imported goods;
- Articles 2.1 and 2.2 of the TRIMs Agreement, in conjunction with paragraph 1(a) of the Agreement's Illustrative List, because the measures are trade-related investment measures inconsistent with Article III:4 of the GATT 1994 which condition the receipt of the full advantage of the measure on the use of domestic goods.

The measures also appear to nullify or impair the benefits accruing to China directly or indirectly under the cited agreements.

The Government of China reserves the right to request the EU and its Member States to produce, during the course of the consultations, further information and documentation relating to the measures in question. China further reserves the right to address additional measures and practices affecting the renewable energy generation sector of the EU and its Member States, whether or not they have been imposed by Greece and Italy specifically and whether or not they have yet been promulgated, as well as additional claims under other provisions of the WTO Agreement.

The Government of China looks forward to receiving a reply to this request and to fixing a mutually convenient date to hold consultations.

Statement of Available Evidence

The evidence set out below is available to China at this time regarding the existence and nature of the subsidies set out in the above Request for Consultations. China reserves the right to supplement or alter this list in the future, as required.

- *Decree of the Ministry of Economic Development of Italy of 5 July 2012: Implementation of Article 25 of the Legislative Decree of 3 March 2011, n. 28, for the incentivizing of the production of electrical energy from photovoltaic solar installations.*¹
- *Decree of the Ministry of Economic Development of Italy of 5 May 2011: Implementation of Article 25 of the Legislative Decree of 3 March 2011, n. 28, for the incentivizing of the production of electrical energy from photovoltaic solar installations.*²
- *Legislative Decree of 3 March 2011, n. 28, Implementation of Directive 2009/28/EC on the promotion of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.*³
- *Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.*⁴
- *Commission Decision 2009/548/EC of 30 June 2009 establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC of the European Parliament and of the Council.*⁵
- *"Implementing Rules for subscription to the registry and for access to the incentivizing tariffs [Feed-In Tariff]" promulgated by the Italian Gestore Servizi Energetici (Regole Applicative per l'Iscrizione ai Registri e per l'Accesso alle Tariffe Incentivanti).*⁶
- *Greek law No. 4062 on the "Development of the Athens former international airport HELLINIKON - PROJECT HELIOS - Promotion of the use of energy from renewable sources (integration of Directive 2009/28/EC) - Sustainability criteria of biofuel and bioliquids (integration of Directive 2009/30/EC)."*⁷
- *Greek law No. 4001 on the "Operation of Electricity and Natural Gas Energy Markets, Hydrocarbon Research, Production and transport networks and other provisions".*⁸
- *Greek law No. 3851, "Accelerating the development of renewable energy to address climate change and other provisions relating to the Ministry of Environment, Energy and Climate Change".*⁹
- *Greek law No. 3468 on "Electricity production from renewable energy sources (RES) and high-efficiency cogeneration and other provisions".*¹⁰

¹ Official Gazette of the Republic of Italy, n. 159, Supplement n. 143, 10 July 2012.

² Official Gazette of the Republic of Italy, n. 109, 12 May 2011.

³ Official Gazette of the Republic of Italy, n. 71, 28 March 2011.

⁴ Official Journal of the European Union L 140, 5 June 2009, pp. 16-47.

⁵ Official Journal of the European Union L 182, 15 July 2009, pp. 33-62.

⁶ Dated 7 August 2012, published on the website of the Italian Gestore Servizi Energetici, available at: http://www.gse.it/it/Conto%20Energia/GSE_Documenti/Fotovoltaico/03%20Documenti/REGOLE%20APPLICATIVE_CE%205_07082012.pdf

⁷ Government Gazette of the Hellenic Republic No. 70 A/30.03.2012.

⁸ Government Gazette of the Hellenic Republic No. 179 A/22.8.2011.

⁹ Government Gazette of the Hellenic Republic No. 85 A/4.6.2010.

¹⁰ Government Gazette of the Hellenic Republic No. 129 A/27.6.2006.