

**CHINA – MEASURES AFFECTING IMPORTS OF
AUTOMOBILE PARTS**

Notification of an Appeal by the People's Republic of China
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 15 September 2008, from the Delegation of the People's Republic of China, is being circulated to Members.

Pursuant to Article 16.4 and Article 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, China hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Reports in *China – Measures Affecting Imports of Automobile Parts* (WT/DS339/R, WT/DS340/R, WT/DS342/R, and Add.1 & 2), and certain legal interpretations developed by the Panel in those Reports.¹

1. China seeks review by the Appellate Body of the following errors of law and legal interpretation contained in Panel Report:

- a. The Panel incorrectly interpreted and applied the term "ordinary customs duties" in Article II:1(b), first sentence, of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). The Panel's errors principally arise from its failure to take into account the context provided by the *Harmonized Commodity Description and Coding System* ("Harmonized System") as the basis upon which national customs authorities identify the "product" that is subject to the assessment of ordinary customs duties.²
- b. As a consequence of its erroneous interpretation and application of the term "ordinary customs duty" in Article II:1(b) of the GATT 1994, the Panel erred in its finding that the charge imposed under the measures challenged in this dispute is an "internal tax or other internal charge" within the meaning of Article III:2 of the GATT 1994, and in its finding that the measures affect "the internal sale, offering for sale, purchase, transportation, distribution or

¹ The Panel presented its findings as separate Reports contained in a single document, with separate sections on the Panel's conclusions and recommendations for each complaining party. For ease of reference, China hereafter refers to these Reports as the "Panel Report".

² See, e.g., Panel Report, paras. 7.166, 7.184 – 7.188, 7.192, 7.204 – 7.207, 7.209 – 7.210.

use" of imported products within the meaning of Article III:4 of the GATT 1994.³

- c. In its "alternative" findings set forth in Section VII.D of the Panel Report, the Panel erred in its interpretation and application of the term "motor vehicles" in China's Schedule of Concessions. The Panel's errors principally arise from (i) its misinterpretation of General Interpretative Rule 2(a) of the Harmonized System ("GIR 2(a)"), which provides context for the interpretation of the term "motor vehicles" in China's Schedule of Concessions; (ii) its misinterpretation of a prior decision of the Harmonized System Committee of the World Customs Organization ("WCO") concerning the interpretation of GIR 2(a); and (iii) its failure to take into account the specific guidance provided by the WCO in response to questions from the Panel.⁴
- d. In its "alternative" findings set forth in Section VII.D of the Panel Report, the Panel acted inconsistently with Article 3.2 and Article 11 of the DSU by purporting to resolve a known question of interpretation within the Harmonized System, a non-covered agreement, and by adopting an interpretation of Harmonized System that is contrary to the interpretation held by the WCO, the international organization responsible for administering and interpreting the Harmonized System.⁵
- e. The Panel erred in its interpretation that the challenged measures apply to importers who import completely knocked-down ("CKD") or semi-knocked down ("SKD") kits of motor vehicles under China's regular customs procedures, and who pay duties under China's regular procedures for the payment of customs duties. On the basis of this erroneous interpretation of the challenged measures, the Panel erred in its conclusion that the challenged measures violate paragraph 93 of the *Report of the Working Party on the Accession of China* (WT/ACC/CHN/49) ("Working Party Report"), as incorporated into the *WTO Agreement* through the *Protocol on the Accession of the People's Republic of China* (WT/L/432).⁶
- f. The Panel acted inconsistently with Article 11 of the DSU by making certain findings and conclusions concerning the inconsistency of the challenged measures with paragraph 93 of the *Working Party Report*, in the absence of evidence or legal arguments presented by the complainants to support a *prima facie* case that the challenged measures apply to importers who import CKD or SKD kits of motor vehicles under China's regular customs

³ See, e.g., Panel Report, paras. 7.204 – 7.212, 7.256 – 7.258.

⁴ See, e.g., Panel Report, paras. 7.412 – 7.415, 7.435 – 7.436, 7.439 – 7.441, 7.445 – 7.446. China does not raise specific claims of error in respect of the Panel's findings, set forth in Section VII.D.3 of the Report, concerning the "essential character" test under General Interpretative Rule 2(a) of the Harmonized System. However, in the event that the Appellate Body affirms the Panel's finding that the charge imposed under the challenged measures is an internal tax or charge subject to Article III of the GATT 1994, China requests that the Appellate Body find all of the Panel's "alternative" findings in Section VII.D of the Report, and the related conclusions and recommendations of the Panel, to be moot and of no legal effect.

⁵ See, e.g., Panel Report, paras. 7.412 – 7.415, 7.435 – 7.436, 7.439 – 7.441, 7.445 – 7.446.

⁶ See, e.g., Panel Report, paras. 7.75 – 7.78, 7.636, 7.648, 7.688, 7.737, 7.754, 7.757 – 7.758.

procedures, and who pay duties under China's regular procedures for the payment of customs duties.⁷

2. Conditionally, in the event that the Appellate Body does not sustain either of China's claims of error set forth in paragraphs 1(d) and 1(e) above, China seeks review by the Appellate Body of the following additional errors of law and legal interpretation contained in Panel Report:

- a. The Panel erred in finding that the challenged measures "de facto" create "tariff lines" for CKD or SKD kits of motor vehicles with rates of duty in excess of 10 per cent. The Panel's error of legal interpretation principally relates to the inconsistency of this finding with the ordinary meaning of the term "tariff lines", as identified by the Panel itself. China further considers that, by purporting to modify the condition under which the commitment that China made in paragraph 93 of the *Working Party Report* would arise, the Panel acted inconsistently with Article 3.2 of the DSU.⁸
- b. The Panel erred in finding that certain ten-digit statistical annotations for CKD/SKD kits found in China's customs nomenclature constitute "tariff lines" within the meaning of paragraph 93 of the *Working Party Report*. The Panel's errors of legal interpretation principally relate to (i) the inconsistency of this finding with the Panel's interpretation of the term "tariff lines" in paragraph 93 of the *Working Party Report*; and (ii) the Panel's failure to interpret the term "tariff lines" in the context of the *Working Party Report*.⁹ China considers that the Panel's errors could also be considered a failure to make an objective assessment of the facts, in contravention of Article 11 of the DSU.
- c. The Panel acted inconsistently with Article 6.2, Article 7.1, and Article 11 of the DSU by finding that China violated paragraph 93 of the *Working Party Report* through the creation of ten-digit statistical annotations for CKD/SKD kits in its customs nomenclature, when neither the statistical annotations nor the tariff rates associated with these putative "tariff lines" were within the terms of reference of these disputes.¹⁰

⁷ See, e.g., Panel Report, paras. 7.75 – 7.78, 7.636, 7.648, 7.688, 7.737, 7.754, 7.757 – 7.758.

⁸ See, e.g., Panel Report, paras. 7.754 – 7.758.

⁹ See, e.g., Panel Report, paras. 7.749 – 7.752, 7.757 – 7.758.

¹⁰ See, e.g., Panel Report, paras. 7.749 – 7.752, 7.757 – 7.758.