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EUROPEAN UNION – ANTI-DUMPING MEASURES ON CERTAIN FOOTWEAR FROM CHINA

Request for Consultations by China

The following communication, dated 4 February 2010, from the delegation of China to the delegation of the European Union and to the Chairman 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 pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* and Article 17 of the Agreement on Implementation of Article VI of GATT 1994 ("*Anti-Dumping Agreement*") regarding the following:

(a) Article 9(5) of Council Regulation (EC) No. 384/96 on protection against dumped imports from countries not members of the European Community[1] as amended,[2] which has now been codified and replaced by Council Regulation (EC) No. 1225/2009[3] (the *"Basic AD Regulation"*).

(b) Council Regulation (EC) No. 1472/2006 of 5 October 2006 imposing definitive anti-dumping duties and collecting definitively the provisional anti-dumping duties imposed on imports of certain footwear with uppers of leather from *inter alia* China.[4]

(c) Council Implementing Regulation (EU) No. 1294/2009 of 22 December 2009, imposing definitive anti-dumping duties on imports of certain footwear with uppers of leather originating in *inter alia* China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as

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[1] Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, OJ L 56, 6.3.1996, p.1.

[2] Council Regulation (EC) No. 2331/96 of 2 December 1996, OJ L 317, 6.12.1996, p.1, Council Regulation (EC) No. 905/98 of 27 April 1998, OJ L 128, 30.4.1998, p. 18, Council Regulation (EC) No. 2238/2000 of 9 October 2000, OJ L 257, 11.10.2000, p.2, Council Regulation (EC) No. 1972/2002 of 5 November 2002, OJ L 305, 7.11.2002, p.1, Council Regulation (EC) No. 461/2004 of 8 March 2004, OJ L 77, 13.3.2004, p. 12 and Council Regulation (EC) No. 2117/2005 of 21 December 2005, OJ L 340, 23.12.2005, p. 17.

[3] Council Regulation (EC) No. 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), OJ L 343, 22.12.2009, p.51 and corrigendum to Council Regulation (EC) No. 1225/2009, OJ 7, 12.1.2010, p.22.

[4] OJ L 275, 6.10.2006, p.1.

originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96.[5]

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1. China considers that Article 9(5) of the *Basic AD Regulation* which provides that in case of imports from non-market economy countries, the duty shall be specified for the supplying country concerned and not for each supplier and that an individual duty will only be specified for exporters that demonstrate that they fulfil the criteria listed in that provision, is inconsistent, as such, with the EU's obligations under Article XVI:4 of the *Marrakesh Agreement Establishing the World Trade Organization;* Articles VI:1 and X:3(a) of the GATT 1994; Articles 6.10, 9.2, 9.3, 9.4, 12.2.2 and 18.4 of the AD Agreement, since these provisions require an individual margin and duty to be determined and specified for each known exporter or producer. Furthermore, the criteria listed in Article 9(5) of the *Basic AD Regulation* to obtain an individual duty are unreasonable and not objective. Moreover, by imposing these conditions only to imports from, allegedly, non-market economy countries, the EU's measure is also discriminatory and thus contrary to Article I:1 of the GATT 1994.

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2. China considers that the Council Regulation (EC) No. 1472/2006 of 5 October 2006 imposing definitive anti-dumping duties and collecting definitively the provisional anti-dumping duties imposed on imports of certain footwear with uppers of leather from *inter alia* China[6] ('Definitive Regulation') is inconsistent, among others, with the following provisions of the *Anti-Dumping Agreement*, the GATT 1994 and Part I, paragraph 15 of China's Protocol of Accession.

1. Part I, paragraph 15 (a) (ii) of China's Protocol of Accession, Paragraph 151(e), (f) of the Report of the Working Party on the Accession of China, Articles 2.4 and 6.10.2 of the *Anti-Dumping Agreement* because the EU did not examine the non-sampled cooperating Chinese exporters' Market Economy Treatment and Individual Treatment applications.

2. Article 2.2.2 of the *Anti-Dumping Agreement* because the amounts for administrative, selling and general costs and profits established by the EU for the company granted Market Economy Treatment were not calculated on the basis of a reasonable method as the EU used the administrative, selling and general costs and profits of Chinese exporters in other anti-dumping cases involving products other than the product concerned.

3. Article 2.4 of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994 because by selecting Brazil as the analogue country; using the PCN methodology established; and making adjustments for differences in production costs when normal value is based on prices or constructed values in the analogue country, on the basis of the data of Chinese exporters that were not granted market economy treatment, the EU precluded a fair comparison between the export price and the normal value.

4. Article 2.6 jo. 4.1 of the *Anti-Dumping Agreement* because the EU wrongly established the like product by not excluding STAF below €7.5/pair even though

[5] OJ L 352, 30.12.2009, p. 1.
[6] OJ L 275, 6.10.2006, p. 1.

conceptually and technically there is no difference between STAF below and above €7.5/pair.

5. Articles 3.1 and 17.6(i) of the *Anti-Dumping Agreement* because the EU failed to objectively examine, based on positive evidence, both the volume of the dumped imports and 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, as the EU used different sampling procedures for Chinese exporters on the one hand, and EU producers on the other hand; the EU made the injury assessment partially on the basis of the verified data of the sampled EU producers and partially on the basis of the unverified data provided by the complainants and national federations;

6. Articles 3.1, 3.2 and 17.6(i) of the *Anti-Dumping Agreement* as the EU failed to objectively examine, based on positive evidence, 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 because the EU's underselling calculation was based on a very low quantity of exports of the sampled Chinese exporting producers; the EU wrongly calculated the underselling margin by applying a volume-based reduction ratio to the originally calculated price-based margin and by allocating the non-injurious import value in relation to import values for a period outside the investigation period.

7. Article 3.3 of the *Anti-Dumping Agreement* because the cumulative assessment of imports from China and Vietnam by the EU was inappropriate in light of the conditions of competition between the imported products and the like domestic products.

8. Articles 3.1 and 3.4 of the *Anti-Dumping Agreement* as the EU failed to objectively examine, based on positive evidence, 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 because several key injury indicators were analysed on the basis of the data of the whole EU production and not on the data of the sampled EU producers or EU industry; and the EU inappropriately established the profit margin for the EU industry.

9. Article 3.4 of the *Anti-Dumping Agreement* because the EU failed to examine the impact of the dumped imports on the domestic industry concerned by evaluating all of the relevant economic factors and indices having a bearing on the state of the EU industry, notably production capacity and capacity utilization.

10. Articles 3.1 and 3.5 of the *Anti-Dumping Agreement* as the EU failed to objectively examine, based on positive evidence, 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 because the EU failed to ensure that injury caused to the EU industry by other factors, which included among others, the export performance of EU producers, the effects of counterfeiting, the lifting of the quota on Chinese footwear, changes in pattern of consumption, the decline in EU demand and the effects of exchange rate fluctuations, was not attributed to dumped imports from China.

11. Article 6.1.2 of the *Anti-Dumping Agreement* because the EU failed to ensure the prompt availability of evidence presented in writing by one interested party to other interested parties.

12. Articles 6.2, 6.4 and 6.5 of the *Anti-Dumping Agreement* because the EU failed to provide timely opportunities for all interested parties to see all non-confidential information relevant to the defence of their interests including, but not limited to, the identity and sampling of the EU producers, non-confidential summaries of the questionnaire responses of EU producers, information on the adjustments for differences affecting price comparability.

13. Article 6.5.1 of the *Anti-Dumping Agreement* because the EU failed to ensure the disclosure of the names of the complainants; the provision of non-confidential summaries of confidential information relating to the EU industry, and sampled EU producers in the complaint and questionnaire responses respectively, and data provided by national federations or, where provided, failed to ensure the provision by the EU industry and/or the sampled EU producers, of sufficiently detailed summaries to enable a reasonable understanding of the substance of that information.

14. Article 6.5.2 of the *Anti-Dumping Agreement* because the EU failed to determine that the request for confidentiality of the names of the complainants is not warranted; and the EU failed to reject the confidential information provided by the sampled EU producers, the non-confidential summary of which was not provided.

15. Article 6.1.1 of the *Anti-Dumping Agreement* and Part I, paragraph 15 of China's Accession Protocol because Chinese exporting producers were granted only 15 days by the EU to submit their written reply to the Market Economy Treatment and Individual Treatment questionnaires.

16. Article 6.9 of the *Anti-Dumping Agreement* because the additional definitive disclosure regarding a change in the form of the measures was not made by the EU in sufficient time for the interested parties to defend their interests.

17. Article 6.10 of the *Anti-Dumping Agreement* because the sample of the Chinese exporting producers selected by the EU was not based on the largest percentage of export volumes of the product concerned from China as the sample was established before the exclusion of STAF from the product scope of the investigation; and the domestic sales volumes of the sampled companies were also taken into account for sample selection.

18. Article 6.10.1 of the *Anti-Dumping Agreement* because the sample of the Chinese exporting producers was not selected by the EU in consultation with, and with the consent of the parties concerned.

19. Articles 3.1 and 9.2 of the *Anti-Dumping Agreement* because the anti-dumping duty on Chinese exports was not imposed and collected by the EU on a non-discriminatory basis as the duty rate established for China was higher than that for Vietnam, although both the dumping and injury margins found for Vietnamese exporters were higher than those for Chinese exporters.

20. Articles 6.10, 6.10.2, 9.2 and 9.3 of the *Anti-Dumping Agreement* because although sampling was resorted to in the current case by the EU for Chinese exporting producers, a country-wise duty was imposed on the sampled Chinese exporting producers.

21. Articles 6.10, 6.10.2, and 9.2 of the *Anti-Dumping Agreement* because the EU applied additional conditions by way of the Individual Treatment criteria to deny individual dumping margins to cooperating Chinese exporting producers.

22. Article 12.2.2 of the *Anti-Dumping Agreement* because the EU failed to provide sufficiently detailed explanations in the Definitive Regulation regarding matters of fact and law which led to the acceptance or rejection of the arguments of the interested parties, and on matters of fact and law and reasons which led to the imposition of final measures.

23. Article 17.6(i) of the *Anti-Dumping Agreement* because the analogue country selection process by the EU and the calculation of a dumping margin for the non-sampled cooperating Chinese exporting producers without the examination of their Market Economy Treatment and Individual Treatment applications, did not amount to a proper establishment of facts and an unbiased and objective evaluation of those facts.

24. In consequence, Articles 1 and 18.1 of the *Anti-Dumping Agreement* because an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of the GATT 1994 and in accordance with the provisions of the *Anti-Dumping Agreement*.

The EU's measure, therefore, nullifies and impairs benefits accruing to China under the *Anti-Dumping Agreement* and the GATT 1994.

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3. The EU initiated an expiry review of the anti-dumping measure on imports of certain footwear with uppers of leather from *inter alia* China by publishing a notice of initiation on 3 October 2008.[7] By Council Implementing Regulation (EU) No. 1294/2009 of 22 December 2009 ('Review Regulation'), the Council decided to extend the anti-dumping measure.

China considers that the Review Regulation extending the duties is inconsistent, among others, with the following provisions of the *Anti-Dumping Agreement* and the GATT 1994:

1. Article 5.3 of the Anti-Dumping Agreement because the EU failed to examine the accuracy and adequacy of the evidence provided in the expiry review request in order to determine whether there was sufficient evidence to justify the initiation of the expiry review.

2. Articles 3.1 and 17.6(i) of the *Anti-Dumping Agreement* because the EU failed to objectively examine, based on positive evidence, both the volume of the dumped imports and 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

[7] OJ C 251, 3.10.2008, p. 21.

such products, as the EU used different sampling procedures for Chinese exporters and EU importers, on the one hand, and EU producers on the other hand.

3. Articles 3.1 and 17.6(i) of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994 because the EU failed to objectively examine, based on positive evidence, both the volume of the dumped imports and 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; and Article 6.10 of the *Anti-Dumping Agreement*, because the EU producers' sample selected was neither statistically valid nor representative of the largest volume that could reasonably be investigated; the EU producers' sample was not representative of the product types covered under the scope of the measure and produced in the EU, and of the geographic spread of EU production; the data of the sampled EU producers, pertaining to product types produced differed significantly at different points of the investigation; the EU producers' sample included a producer that outsourced its entire production of the product concerned to a third country in the review investigation period; an incorrect product classification methodology was used by the EU mid-way through the investigation; in constituting the EU importers' sample, the EU failed to cover the largest volume that could reasonably be investigated.

4. Article 2.1 of the *Anti-Dumping Agreement* because the affirmative findings of the EU regarding dumping were based on an unrepresentative volume of the total Chinese imports into the EU during the review investigation period.

5. Article 2.4 of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994 because the analogue country selection process of the EU; and the PCN methodology, as initially used by the EU and suddenly changed in the middle of the investigation, of necessity precluded a fair comparison between the export price and the normal value.

6. Articles 3.1, 3.4 and 17.6(i) of the *Anti-Dumping Agreement* because the EU failed to make an objective examination, on the basis of positive evidence, of the factors having a bearing on the state of the domestic industry because several key injury indicators were analysed on the basis of the data of the whole EU production and not the data of the sampled EU producers or the EU industry.

7. Articles 3.1, 3.5 and 17.6(i) of the *Anti-Dumping Agreement* because the EU failed to make an objective examination, on the basis of positive evidence, that dumped imports are, through the effects of dumping, causing injury; and because the EU failed to ensure that injury caused to the EU industry by other factors was not attributed to dumped imports.

8. Article 6.1.2 of the *Anti-Dumping Agreement* because the EU failed to provide other interested parties prompt access to the information in the non-confidential questionnaire responses filed by sampled EU producers.

9. Articles 6.2 and 6.4 of the *Anti-Dumping Agreement* because the EU failed to provide timely opportunities for all interested parties to see all non-confidential information relevant to the defence of their interests concerning sampling of EU producers, selection of the analogue country and other procedural issues.

10. Article 6.5.1 of the *Anti-Dumping Agreement* because the EU failed to ensure the disclosure of the names of the complainants; and the provision of summaries of confidential information relating to the EU industry, and sampled EU producers in the expiry review request and questionnaire responses respectively, or, where provided, failed to ensure the provision by the EU industry and/or the sampled EU producers, of sufficiently detailed summaries to enable a reasonable understanding of the substance of that information.

11. Article 6.5.2 of the *Anti-Dumping Agreement* because the EU failed to determine that the request for the confidentiality of the names of the complainants is not warranted; and failed to reject the confidential information provided by the sampled EU producers, the non-confidential summaries of which were not provided.

12. Article 6.8 of the *Anti-Dumping Agreement* because the EU did not apply facts available when faced with incorrect and deficient information, including product classification information, provided by sampled EU producers in the injury questionnaire responses.

13. Article 6.9 of the *Anti-Dumping Agreement* because the EU failed to inform all interested parties of the essential facts under consideration with regard to the Market Economy Treatment and Individual Treatment applications of Chinese exporters.

14. Article 11.3 of the *Anti-Dumping Agreement* because the EU's determination that expiry of the measure is likely to lead to a continuation of dumping and injury is based on determination of continued dumping and injury in violation of Articles 2.1, 2.4, 3.1, 3.4, 3.5, 6.8, 6.10 and 17.6(i) of the *Anti-Dumping Agreement*.

15. Article 12.2.2 of the *Anti-Dumping Agreement* because the EU failed to provide sufficiently detailed explanations in the Review Regulation regarding matters of fact and law and reasons which led to the extension of the measures; and of reasons which led to the acceptance or rejection of the arguments of the interested parties.

16. Article 17.6(i) of the *Anti-Dumping Agreement* because the analogue country selection process by the EU did not amount to a proper establishment of the facts and an unbiased and objective evaluation of those facts.

17. In consequence, Articles 1 and 18.1 of the Anti-Dumping Agreement because an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of the GATT 1994 and in accordance with the provisions of the Anti-Dumping Agreement.

The Government of China reserves its right to raise further factual claims and legal issues during the course of the consultations.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

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