

## CHINA – PROVISIONAL ANTI-DUMPING DUTIES ON CERTAIN IRON AND STEEL FASTENERS FROM THE EUROPEAN UNION

### Request for Consultations by the European Union

The following communication, dated 7 May 2010, from the delegation of the European Union to the delegation of China and to the Chairman 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 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"). The issues which the European Union would like to raise in the course of the consultations include, but are not limited to, the following measures:

- Ministry of Commerce of the People's Republic of China, Notice no. 115 (2009), including its annex, imposing provisional anti-dumping duties on certain iron or steel fasteners from the European Union;
- Article 56 of the Regulations of the People's Republic of China on Anti-Dumping.

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1. The EU considers that Ministry of Commerce of the People's Republic of China, Notice no. 115 (2009), including its annex, imposing provisional anti-dumping duties on certain iron or steel fasteners from the European Union ("Provisional Imposition") is inconsistent, among others, with China's obligations under the following provisions of the *Anti-Dumping Agreement* and the GATT 1994.

- (1) Article 2.2 and Article 2.2.2 of the *Anti-Dumping Agreement*, and Article VI:1 of the GATT 1994, because the amounts for administrative, selling and general costs and profits established by China for the sole cooperating EU company were not calculated on the basis of a reasonable method as China used an unreasonable profitability rate, denied many reasonable adjustments, and because the export price concerned a special product not representative of the products normally sold by the company.
- (2) Article 2.4 of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994 because by selecting an export price concerning a special product not representative

of the products normally sold by the cooperating company, China precluded a fair comparison between the export price and the normal value.

- (3) Article 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 all injury indicators were positive with the sole exception of ending stocks, and since the loss-making situation improved over time and the EU export prices were significantly higher than domestic prices.
- (4) Article 3.1 and Article 3.5 of the *Anti-Dumping Agreement* because China failed to make an objective determination, on the basis of evidence, that the dumped imports are, through the effects of dumping, causing injury, as China failed to objectively examine the temporal disconnect between alleged dumping and alleged worsening of the situation for the domestic industry.
- (5) Article 6.1.3 of the *Anti-Dumping Agreement* because China failed to ensure the prompt availability of the full text of the written application as the main figures about the Chinese industry were omitted or indexed despite the large number of domestic producers.
- (6) Article 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.
- (7) Article 6.5.1 of the *Anti-Dumping Agreement* because China failed to ensure the provision of non-confidential summaries of confidential information relating to the injury investigation or, where provided, failed to give summaries in sufficient detail to enable a reasonable understanding of that information.
- (8) Article 6.5.1 and Article 6.5.2 of the *Anti-Dumping Agreement* because China failed to determine that the request for confidentiality of the names of the complainants was not warranted.
- (9) Article 6.10 of the *Anti-Dumping Agreement* because the sample of EU exporting producers selected by China was not based on the largest percentage of the volume of the exports from the EU which could reasonably be investigated because the Chinese authorities asked for a disproportionate amount of information for the selection of the sample which had the effect to discourage several EU exporters from cooperating.
- (10) Article 12.2.1 of the *Anti-Dumping Agreement* because in its public notice of the imposition of provisional measures, or in a separate report, China did not set forth sufficiently detailed explanations for the preliminary determinations on injury, together with references to the matters of fact and law which have led to arguments being accepted or rejected. Furthermore, and in particular, China failed to meet its obligations with regard to 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*.

The European Union also considers, including for the detailed reasons stated above, taken individually and collectively, that the Provisional Imposition was taken contrary to the provisions of paragraph 1 of Article 7 of the Anti-Dumping Agreement.

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2. The EU considers that Article 56 of the Regulations of the People's Republic of China on Anti-Dumping<sup>1</sup> is inconsistent, among others, with China's obligations under the following provisions of the *Anti-Dumping Agreement*, the DSU and the GATT 1994.

- (1) The EU considers that Article 56 of the Regulations of the People's Republic of China on Anti-Dumping is inconsistent with Article 18.1 of the *Anti-Dumping Agreement*, because China fails to meet its obligation that no specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by the *Anti-Dumping Agreement*.
- (2) The EU considers that Article 56 of the Regulations of the People's Republic of China on Anti-Dumping is inconsistent with Article 23 of the DSU, in particular Article 23.1 thereof, because China fails to meet its obligation to have recourse to, and abide by, the rules and procedures of the DSU when seeking the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements.
- (3) The EU considers that Article 56 of the Regulations of the People's Republic of China on Anti-Dumping is inconsistent with Article I:1 of the GATT 1994, since China fails to meet its obligation to accord immediately and unconditionally any advantage, favour, privilege or immunity granted to any product originating in or destined for any other country to the like product originating in or destined for the territories of all other WTO Members, with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III of the GATT 1994.
- (4) The EU considers that Article 56 of the Regulations of the People's Republic of China on Anti-Dumping is inconsistent with Article X:3(a) of the GATT since China fails to meet its obligation to administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings described in paragraph 1 of Article X of the GATT 1994.

The European Union considers that the Provisional Imposition also has to be seen in the light of Article 56 of the Regulations of the People's Republic of China on Anti-Dumping and that the Provisional Imposition is a further incidence of these inconsistencies described above.

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<sup>1</sup> As specified in WTO document G/ADP/N1/CHN/2, Article 56 provides, in the translation made by China for reference by WTO Members, that "[w]here a country (region) discriminatorily imposes anti-dumping measures on the exports from the People's Republic of China, China may, on the basis of actual situations, take corresponding measures against that country (region)".

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.

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