



17 September 2015

(15-4756)

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Original: English

**EUROPEAN COMMUNITIES – DEFINITIVE ANTI-DUMPING MEASURES ON CERTAIN IRON
OR STEEL FASTENERS FROM CHINA**

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE PEOPLE'S REPUBLIC OF CHINA

**NOTIFICATION OF AN OTHER 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 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 14 September 2015, from the delegation of the People's Republic of China, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 23 of the Working Procedures for Appellate Review, the People's Republic of China ("China") hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel in *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (Recourse to Article 21.5 of the DSU by China)* (WT/DS397/RW) ("Panel Report"), and certain legal interpretations developed by the Panel in that Report.

2. Pursuant to Rules 23(1) and 23(3) of the Working Procedures for Appellate Review, China simultaneously files this Notice of Other Appeal and its Other Appellant Submission with the Appellate Body Secretariat.

3. Pursuant to Rule 23(2)(c)(ii) of the Working Procedures for Appellate Review, this Notice of Other Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice of China's ability to refer to other paragraphs of the Panel Report in the context of this appeal.

4. China requests the Appellate Body to reverse various findings and conclusions of the Panel as a result of the errors of law and of legal interpretation contained in the Panel Report as identified below.

**1 REVIEW OF THE PANEL'S FINDINGS WITH RESPECT TO CHINA'S CLAIMS UNDER
ARTICLE 2.4 OF THE AD AGREEMENT CONCERNING THE EUROPEAN UNION'S
FAILURE TO MAKE ADJUSTMENTS FOR DIFFERENCES IN TAXATION**

5. China seeks review by the Appellate Body of the Panel's findings and conclusions concerning China's claim that the European Union violated Article 2.4 of the AD Agreement by failing to make a fair comparison between normal value and export price, and in particular by failing to make due allowances for differences in taxation.¹ The Panel erred in its interpretation and application of Article 2.4 of the AD Agreement when it found that the European Union did not violate Article 2.4 of the AD Agreement by rejecting the Chinese producers' request for an adjustment for differences

¹ Panel Report, paras. 7.209 – 7.223 and 8.2(iii).

in taxation. In that respect, China has identified, *inter alia*, the following errors in the issues of law and legal interpretations developed by the Panel:

- The Panel erred in finding that the Commission was not required to make an adjustment for differences in taxation because the analogue country methodology was used;
- The Panel erred in its application of Article 2.4 in finding that the Chinese producers did not show that the difference in taxation affected price comparability.

6. China requests the Appellate Body to reverse these Panel's findings and conclusions and to find that the European Union acted inconsistently with Article 2.4 of the AD Agreement.

2 REVIEW OF THE PANEL'S FINDINGS WITH RESPECT TO CHINA'S CLAIMS UNDER ARTICLE 2.4 OF THE AD AGREEMENT CONCERNING THE EUROPEAN UNION'S FAILURE TO MAKE ADJUSTMENTS FOR CERTAIN OTHER DIFFERENCES AFFECTING PRICE COMPARABILITY

7. China seeks review by the Appellate Body of the Panel's findings and conclusions concerning China's claim that the European Union violated Article 2.4 of the AD Agreement by failing to make a fair comparison between normal value and export price, and in particular by failing to make due allowances for certain other differences affecting price comparability. The Panel erred in its interpretation and application of Article 2.4 of the AD Agreement and failed to comply with its functions as required by Article 11 of the DSU when finding that the European Union did not violate Article 2.4 by rejecting the Chinese producers' requests for adjustments for differences with regard to "easier access to raw materials", "use of self-generated electricity", and "efficiency and productivity" which affected price comparability.² In that respect, China has identified, *inter alia*, the following errors in the issues of law and legal interpretations developed by the Panel:

- The Panel erred in finding that the Commission was not obliged to make adjustments to reflect differences in costs because the analogue country methodology was used;
- The Panel erred in its application of Article 2.4 in finding that the Chinese producers did not show that the alleged differences in costs affected price comparability;
- The Panel failed to make an objective assessment of the facts, as required under Article 11 of the DSU, by failing to address all aspects of China's claim and by failing to consider the evidence presented by China in its totality.

8. China requests the Appellate Body to reverse these Panel's findings and conclusions and to find that the European Union acted inconsistently with Article 2.4 of the AD Agreement.

3 REVIEW OF THE PANEL'S FINDINGS WITH RESPECT TO CHINA'S CLAIMS UNDER ARTICLE 2.4 OF THE AD AGREEMENT CONCERNING THE EUROPEAN UNION'S FAILURE TO MAKE ADJUSTMENTS FOR DIFFERENCES IN PHYSICAL CHARACTERISTICS

9. In case the Appellate Body were to reverse the Panel's findings that the European Union violated Article 2.4 of the AD Agreement by failing to provide the Chinese producers with information regarding the characteristics of Pooja Forge's products that were used in determining normal values, China requests the Appellate Body to review the Panel's findings under Article 2.4 with respect to the European Union's failure to make adjustments for differences in physical characteristics.³

10. In that regard, China requests the Appellate Body to reverse the Panel's findings and to find that the European Union violated Article 2.4 as it failed to make adjustments for differences in physical characteristics both included and not included in the original PCNs.

² Panel Report, paras. 7.240 – 7.250 and 8.2(iii).

³ Panel Report, paras. 7.225 – 7.230 and paras. 7.234 – 7.236 and 8.2(iii).

4 REVIEW OF THE PANEL'S FINDINGS WITH RESPECT TO CHINA'S CLAIM UNDER ARTICLE 6.1.2 OF THE AD AGREEMENT CONCERNING THE EUROPEAN UNION'S FAILURE TO ENSURE THAT THE INFORMATION PROVIDED BY POOJA FORGE WAS MADE AVAILABLE PROMPTLY TO THE CHINESE PRODUCERS

11. China seeks review by the Appellate Body of the Panel's findings and conclusions concerning China's claim that the European Union violated Article 6.1.2 of the AD Agreement by failing to ensure that the information provided by Pooja Forge concerning the list and characteristics of its products was made available promptly to the Chinese producers.⁴

12. The Panel erred in its interpretation of the term "interested parties" as included in Article 6.11 in considering that the status of "interested parties" is dependent on a decision of the investigating authorities which must appear in the investigation record and in stating that such decision is made at the request of the party concerned. The Panel also erred in its interpretation and application of Article 6.1.2 in concluding that the obligation in Article 6.1.2 only applies to those parties which are "interested parties" under Article 6.11.⁵ The Panel also erred in its interpretation of the Appellate Body's findings in the original dispute.⁶

13. China requests the Appellate Body to reverse the Panel's findings and conclusions and to find that the European Union violated Article 6.1.2 of the AD Agreement by failing to ensure that the information provided by Pooja Forge was made available promptly to the Chinese producers.

5 REVIEW OF THE PANEL'S FINDINGS WITH RESPECT TO CHINA'S CLAIM UNDER ARTICLE 6.5.1 OF THE AD AGREEMENT

14. If the Appellate Body reverses the Panel's findings and conclusions that the European Union violated Article 6.5 of the AD Agreement by treating as confidential the information submitted by Pooja Forge regarding the list and characteristics of its products and instead finds that the European Union did not violate Article 6.5 of the AD Agreement, then China requests the Appellate Body to complete the analysis of China's claim under Article 6.5.1 of the AD Agreement for which the Panel did not make findings.⁷

15. More specifically, China requests that the Appellate Body finds and concludes that the European Union violated Article 6.5.1 of the AD Agreement because it failed to ensure that Pooja Forge provides a meaningful non-confidential summary of the list of its products and of the information concerning the characteristics of its products and/or because it failed to ensure that Pooja Forge identifies the existence of exceptional circumstances and provides a statement of reasons why summarization of such information was not possible.

⁴ Panel Report, paras. 7.116 – 7.123 and para. 8.2(i).

⁵ Panel Report, paras. 7.118 – 7.119.

⁶ Panel Report, paras. 7.120 – 7.122.

⁷ Panel Report, paras. 7.50 and 8.3.