

CHINA – MEASURES AFFECTING IMPORTS OF AUTOMOBILE PARTS

Request for the Establishment of a Panel by the European Communities

The following communication, dated 15 September 2006, from the delegation of the European Communities to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The European Communities hereby requests the establishment of a panel pursuant to Articles 4.7 and 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") Article 8 of the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement") and Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").

This request concerns the People's Republic of China's (hereinafter "China") imposition of measures that adversely affect exports of automobile parts from the European Communities to the Chinese market. Specifically, this request concerns:

- *Policy on Development on Automotive Industry* (Order No. 8 of the National Development and Reform Commission, 21 May 2004);
- *China's Measures for the Administration of Importation of Automotive Parts and Components for Complete Vehicles* (Decree No. 125), which entered into force on 1 April 2005;
- *China's Rules for Determining Whether Imported Automotive Parts and Components Constitute Complete Vehicles* (General Administration of Customs Public Announcement No. 4), which entered into force on 1 April 2005.

For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures.

These measures nullify or impair the European Communities benefits in respect of the People Republic of China's obligations under the GATT 1994, the TRIMs Agreement, the SCM Agreement and the Protocol on the Accession of the People's Republic of China. In particular:

- China has acted inconsistently with Article II:1(a) and (b) of the GATT 1994 by failing to accord to the commerce of another Member treatment no less favourable than that provided for in the appropriate Part of the Schedule annexed to the GATT 1994. China has failed to exempt products, which are the products of territories of another Member, on their importation into China's territory, from ordinary customs duties in excess of those set forth

and provided in China's Schedule. China has failed to exempt such products from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

- China has acted inconsistently with Article III:2 of the GATT 1994 by subjecting the products of the territory of other Members imported into the territory of China, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. China has also applied internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1 of Article III;
- China has acted inconsistently with Article III:4 of the GATT 1994 by imposing specified thresholds for imported parts in an assembled vehicle above which an additional charge applies on each imported part included in the vehicle. In addition, as part of the measures, China also imposes additional administrative requirements on importers and manufacturers that may not meet the required threshold for domestic content. Thereby, China has failed to accord, to products of the territory of the European Communities imported into the territory of China, treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use;
- China has acted inconsistently with Article III:5 of the GATT 1994 by establishing and maintaining internal quantitative regulations relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, China has applied internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1 of Article III;
- China has acted inconsistently with Article 2.1 and Article 2.2 of the TRIMs Agreement in conjunction with paragraph 1(a) of the Illustrative List annexed to the TRIMs Agreement by applying investment measures related to trade in goods that are inconsistent with the provisions of Article III or Article XI of GATT 1994 and by applying investment measures related to trade in goods, compliance with which is necessary to obtain an advantage, and which require the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production. Further, China has acted inconsistently with Article 2.1 and 2.2 of the TRIMs Agreement in conjunction with paragraph 2(a) of the Illustrative List annexed to the TRIMs Agreement, by applying investment measures related to trade in goods that are inconsistent with the provisions of Article III or Article XI of GATT 1994 and by applying investment measures related to trade in goods, compliance with which is necessary to obtain an advantage, and which restricts the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;
- China has acted inconsistently with Article 3 of the SCM Agreement by granting or maintaining subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance and by granting or maintaining subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

- China has acted inconsistently with its obligations under the Marrakesh Agreement Establishing the World Trade Organization, as set out in the Protocol on the Accession of the People's Republic of China to the WTO, in particular Part I paragraph 7.3 of the Protocol of Accession of China, and in paragraph 203 of the Working Party Report on the Accession of China in conjunction with Part I, paragraph 1.2 of the Protocol of Accession of China, and paragraph 342 of the Working Party Report on the Accession of China by failing, upon accession, to comply fully with the TRIMs Agreement, without recourse to Article 5 thereof, and to eliminate local content requirements and to not enforce the terms of contracts containing such requirements. Further, China has made the allocation, permission or rights for importation and investment conditional upon performance requirements set by national or sub-national authorities, or subject to secondary conditions covering, for example, the use of local inputs.
- China has acted inconsistently with its obligations under the Marrakesh Agreement Establishing the World Trade Organization, as set out in the Protocol on the Accession of the People's Republic of China to the WTO, in particular Part I paragraph 7.2 of the Protocol of Accession of China, by introducing measures that are inconsistent with the provisions of GATT 1994, in particular Article III.
- China has nullified or impaired the benefits accruing to the European Communities under Article XXIII:1(b) GATT 1994 in conjunction with the Protocol on the Accession of the People's Republic of China to the WTO, in particular paragraph 93 of the Working Party Report on the Accession of China, in conjunction with Part I, paragraph 1.2 of the Protocol of Accession of China and paragraph 342 of the Working Party Report on the Accession of China, by applying tariffs exceeding 10% on completely knocked-down and semi knocked-down kits for motor vehicles.

On 30 March 2006, the European Communities requested consultations with China with a view to reaching a mutually satisfactory solution of the matter. The request was circulated in document WT/DS339/1 dated 3 April 2006. The consultations were held on 11 and 12 May 2006 in Geneva on the above-mentioned and other measures. They have not led to a satisfactory resolution of the matter.

Therefore, the European Communities respectfully requests that a panel be established, with standard terms of reference under Article 7 paragraph 1 of the DSU, to consider the above complaint with a view to finding that China's measures nullify or impair the EC's benefits in respect of China's obligations under Articles II:1(a) and (b), III:2, III:4, III:5 GATT 1994, Articles 2.1 and 2.2 in conjunction with paragraphs 1(a) and 2(a) of the Illustrative List of the TRIMs Agreement, Article 3 of the SCM Agreement, Part I, paragraph 7.3 of the Protocol on the Accession of the People's Republic of China to the WTO and paragraph 203 and 93 of the Working Party Report on the Accession of China in conjunction with Part I, paragraph 1.2 of the Protocol of Accession of China, and paragraph 342 of the Working Party Report on the Accession of China and Part I, paragraph 7.2 of the Protocol on the Accession of the People's Republic of China to the WTO.

The European Communities asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 28 September 2006.
