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CHINA – ANTI-DUMPING MEASURES ON IMPORTS OF CELLULOSE PULP FROM CANADA

REQUEST FOR CONSULTATIONS BY CANADA

The following communication, dated 15 October 2014, from the delegation of Canada to the delegation of China and to the Chairperson 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 Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement") with respect to China's measures imposing anti-dumping duties on imports of cellulose pulp from Canada, as set forth in Ministry of Commerce of China ("MOFCOM") Notice No. 75 of 2013 (6 November 2013), including its annex (the "Preliminary Determination") and Notice No. 18 of 2014 (4 April 2014), including its annex (the "Final Determination").

These measures appear to be inconsistent with China's obligations under the following provisions of the Anti-Dumping Agreement and the GATT 1994:

1. Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement because China failed to calculate costs on the basis of records kept by the exporter or producer which reasonably reflected the costs associated with the production and sale of the product under consideration, and failed to adjust costs appropriately for circumstances in which those costs were affected by start-up operations during the period of investigation.
2. Articles 2.2 and 2.2.2 of the Anti-Dumping Agreement because China failed to determine amounts for administrative, selling and general costs on the basis of actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.
3. Articles 2.1 and 2.4 of the Anti-Dumping Agreement because China failed to make a fair comparison between the export price and normal value by, for instance, improperly deducting certain expenses from the export price and by not excluding certain sales when calculating the export price.
4. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because China's determination of injury was not based on positive evidence and did not involve an objective examination of the volume of the dumped imports and the effect of those imports on prices in the domestic market for like products. China failed to properly consider whether there had been a significant increase in dumped imports. China also failed to properly consider whether there had been a significant price undercutting by the dumped imports as compared with the price of a domestic like product, or whether the effect of such imports was otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

5. Articles 3.1 and 3.4 of the Anti-Dumping Agreement because China's determination of injury was not based on positive evidence, did not involve an objective examination of the impact of dumped imports on domestic producers of like products and failed to properly evaluate all relevant economic factors and indices having a bearing on the state of the domestic industry.

6. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because China failed to demonstrate, through an objective examination based on positive evidence, the causal relationship between the dumped imports and the injury to the domestic industry. China also failed to conduct an objective examination, based on positive evidence, of known factors other than the dumped imports which at the same time were injuring the domestic industry and improperly attributed the injuries caused by those factors to the dumped imports.

7. Articles 3.1 and 4.1 of the Anti-Dumping Agreement because China made a determination of injury having improperly defined the domestic industry and, as a result, failed to base its determination on positive evidence and conduct an objective examination of the facts with respect to the domestic industry producing the like product.

8. Article 6.2 of the Anti-Dumping Agreement because China failed to grant interested parties a full opportunity to defend their interests.

9. Articles 6.1 and 6.8 and paragraph 3 of Annex II to the Anti-Dumping Agreement because China, in determining the margins of dumping, failed to give Canadian exporters or producers ample opportunity to present in writing all evidence they considered relevant in respect of the investigation and to take into account all the information which was verifiable, appropriately submitted, and supplied in a timely fashion.

10. Article 6.8 and paragraph 7 of Annex II to the Anti-Dumping Agreement because China improperly relied on facts available to determine the margins of dumping for Canadian exporters of cellulose pulp for which individual margins of dumping were not established.

11. Article 6.9 of the Anti-Dumping Agreement because China failed to inform all interested parties of the essential facts under consideration forming the basis for the decision to impose definitive anti-dumping measures regarding Canadian exporters of cellulose pulp for which individual margins of dumping were not established.

12. Articles 6.10, 6.10.2 and 9.4 of the Anti-Dumping Agreement because China did not determine individual margins of dumping for exporters or producers not initially selected that voluntarily submitted the necessary information in time for that information to be considered by China during the course of the investigation.

13. Articles 8.1 and 8.3 of the Anti-Dumping Agreement because China improperly rejected price undertakings offered by exporters after the preliminary affirmative determination.

14. Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement because China failed to provide public notice of all relevant information on the matters of fact and law and reasons which led to the imposition of final measures.

15. Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 as a consequence of the breaches of the Anti-Dumping Agreement described above.

China's measures, therefore, appear to nullify or impair benefits accruing to Canada directly or indirectly under the cited agreements.

Canada reserves the right to address additional measures and claims in the course of consultations.

Canada looks forward to receiving China's reply to this request and to determining a mutually convenient date for consultations.