

Original: English

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

Request for Consultations by China

The following communication, dated 31 July 2009, from the delegation of China to the delegation of the European Communities 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 Communities (the "EC") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), and Article 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "AD Agreement") with respect to, but not necessarily limited to, the following EC measures:

- (a) Article 9(5) of Council Regulation (EC) No. 384/96 of 22 December 1995¹, as amended, on protection against dumped imports from countries not members of the European Community (the "*Basic AD Regulation*");
- (b) Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China²;

These measures appear to be inconsistent with the EC's obligations under the provisions of the GATT 1994, the AD Agreement and the Protocol of Accession of the People's Republic of China ("China") which is an integral part of the *Marrakech Agreement Establishing the World Trade Organization*.

1. Article 9(5) of the *Basic AD Regulation* 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. China considers that Article 9(5) of the *Basic AD Regulation* is inconsistent, as such, with the EC'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.

¹ OJ L 56, 6.3.1996, pp. 1-20.

² OJ L 29, 31.1.2009, p. 1.

Furthermore, the criteria listed in Article 9(5) 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 EC's measure is also discriminatory and thus contrary to Article I:1 of the GATT 1994.

2. China considers that the EC's imposition of anti-dumping duties on imports of certain iron or steel fasteners originating in the People's Republic of China is inconsistent with the EC's obligations under Articles VI and X:3(a) of the GATT 1994; Articles 1, 2.1, 2.2, 2.4, 2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 5.4, 6.1, 6.2, 6.4, 6.5, 6.10, 9.2, 9.4 and 17.6(i) of the AD Agreement as well as Part I, paragraph 15 of China's Protocol of Accession.

- (i) The EC imposed a countrywide duty on the sole basis that China is a non-market economy country and exempted from this duty only those few Chinese exporters that were able to meet the so-called "Individual Treatment" criteria, thereby acting inconsistently with Articles 2, 6.10, 9.2, 9.3, 9.4 and 12.2.2 of the AD Agreement;
- (ii) The EC granted only 15 days to Chinese exporters to submit their written reply to the Market Economy Treatment and Individual Treatment questionnaires contrary to the obligation provided for in Article 6.1.1 of the AD Agreement and Part I, paragraph 15 of China's Accession Protocol;
- (iii) The EC initiated the AD investigation with the support of producers accounting for only 27 per cent of the total domestic production, rendering the said investigation inconsistent with Article 5.4 of the AD Agreement;
- (iv) The EC wrongly included, in the scope of the product under consideration, both standard and special fasteners as "like" products, despite their readily apparent differences and uses, thereby acting inconsistently with the provision of Article 2.1, as interpreted by Article 2.6, of the AD Agreement;
- (v) The EC did not take into consideration all appropriate adjustments affecting price comparability, in particular, by failing to make a product comparison on the basis of the full product control number, thereby acting inconsistently with Article 2.4 of the AD Agreement and Article VI:1 of the GATT 1994;
- (vi) The EC based its injury determination on data from EC producers accounting for only 27 per cent of the estimated total EC production of the product concerned in 2006, thereby acting inconsistently with Articles 3 and 4.1 of the AD Agreement;
- (vii) The EC failed to determine which proportion of the total domestic production was represented by the EC producers in relation to which the injury determination was made throughout the investigation period, thereby acting inconsistently with Articles 3 and 4.1 of the AD Agreement;
- (viii) The EC conducted the injury determination on the basis of a sample of EC producers accounting for only 17.5 per cent of the total EC production of the product at issue in 2006, thereby acting inconsistently with Articles 3 and 4.1 of the AD Agreement;
- (ix) The EC failed to exclude from the scope of the domestic industry EC producers that are related to the exporters or importers or are themselves importers of the allegedly

dumped product, thereby acting inconsistently with Articles 3 and 4.1 of the AD Agreement;

- (x) The EC failed to exclude from the volume of imports, for injury determination purposes, non-dumped imports, thereby acting inconsistently with Article 3.1 and 3.2 of the AD Agreement and Article VI:1 of the GATT 1994;
- (xi) The injury determination failed to be based on positive evidence and to involve an objective examination since, in analyzing the economic factors and indices, the EC disregarded the multiple positive trends and figures shown by most factors and focused its decision on the sole factor that showed a negative trend, *i.e.* market share, thereby acting inconsistently with Article 3.1 and 3.4 of the AD Agreement and Article VI:1 of the GATT 1994;
- (xii) The EC failed to weigh, properly and reasonably, factors other than the alleged dumped imports in its examination of injury and causation, in particular, imports from third countries, increasing costs of raw materials, and export performance of the EC community, thereby acting contrary to Article 3.5 of the AD Agreement;
- (xiii) The EC disclosed the "Assessment of Market Economy Treatment Claims by nine producers in the PRC"(DG TRADE/H3/D(2008)), containing relevant confidential information which pertains to different Chinese producers, thereby acting inconsistently with Article 6.5 of the AD Agreement;
- (xiv) The EC failed to provide the opportunity to the interested parties to see all relevant information including, but not limited to, the identity of the applicants, non-confidential summaries of the questionnaire responses of EC producers, data concerning the normal value in the analogue country and information on the adjustments for differences affecting price comparability, thereby acting inconsistently with Article 6.2, 6.4 and 6.5 of the AD Agreement and Part I, paragraph 15 of China's Protocol of Accession.

3. The EC's measures also appear to nullify or impair the benefits accruing to China directly or indirectly under the cited agreements.

4. China reserves its right to raise additional factual matters and legal claims during the course of the consultations.

5. China looks forward to receiving your reply to the present request and to fixing a mutually convenient date and venue for consultations.
