

ANNEX G

REQUEST FOR CONSULTATIONS AND REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA

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ANNEX G-1

REQUEST FOR CONSULTATIONS BY CHINA

WORLD TRADE ORGANIZATION

WT/DS397/1
G/L/891
G/ADP/D79/1
4 August 2009
(09-3790)

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

¹ OJ L 56, 6.3.1996, pp. 1-20.

² OJ L 29, 31.1.2009, p. 1.

("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. 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.

ANNEX G-2

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA

WORLD TRADE ORGANIZATION

WT/DS397/3
13 October 2009

(09-5005)

Original: English

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

Request for the Establishment of a Panel by China

The following communication, dated 12 October 2009, from the delegation of China to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 31 July 2009, The People's Republic of China ("China") requested 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, Article 9(5) of Council Regulation (EC) No. 384/96 of 22 December 1995¹ on Protection against Dumped Imports from Countries not Members of the European Community, as amended, and 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 China.²

The request for consultations was circulated in document WT/DS397/1 – G/L/891 – G/ADP/D79/1 dated 4 August 2009. The consultations were held on 14 September 2009 in Geneva, with a view to reaching a mutually satisfactory solution. Unfortunately, those consultations failed to lead to a satisfactory resolution of the matter.

Therefore, China hereby requests, pursuant to Articles 4 and 6 of the *DSU*, Article XXIII:2 of the *GATT 1994* and Article 17.4 of the *AD Agreement*, that the Dispute Settlement Body ("DSB") establish a Panel with regard to the following measures:

- (c) Article 9(5) of Council Regulation (EC) No. 384/96 of 22 December 1995¹ on protection against dumped imports from countries not members of the EC, as amended.
- (d) 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.

China requests that the Panel have standard terms of reference as set out in Article 7.1 of the DSU. China asks that this request be placed on the agenda for the next meeting of the Dispute Settlement Body that will take place on 23 October 2009.

I. ARTICLE 9(5) OF COUNCIL REGULATION (EC) NO. 384/96 OF 22 DECEMBER 1995 ON PROTECTION AGAINST DUMPED IMPORTS FROM COUNTRIES NOT MEMBERS OF THE EC, AS AMENDED

Article 9(5) of the Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the EC, as amended, (the "*Basic AD Regulation*") provides that, in case of imports from non-market economy countries including China, the anti-dumping duty shall be specified for the supplying country concerned and not for each supplier and that an individual duty will only be specified for the exporters which can demonstrate, on the basis of properly substantiated claims, that they fulfil all the criteria listed in that provision.

China submits that Article 9(5) of the *Basic AD Regulation* is inconsistent as such with, at least, the obligations under the following provisions of the *AD Agreement*, the *GATT 1994* and the *Marrakesh Agreement Establishing the World Trade Organisation*:

- (a) Articles 6.10 of the AD Agreement since, in order to benefit from an individual dumping margin, an exporter from China must fulfil specific conditions that are not provided for in the AD Agreement;
- (b) Article 9.2 of the AD Agreement since, in order to benefit from an individual anti-dumping duty, an exporter from China must fulfil specific conditions that are not provided for in the AD Agreement;
- (c) Article 9.3 of the AD Agreement since for those producers/exporters who do not fulfil the conditions for individual treatment, the anti-dumping duty is determined on the basis of a dumping margin likely to exceed the dumping margin established in accordance with Article 2 of the AD Agreement;
- (d) Article 9.4 of the AD Agreement given that the anti-dumping duty that is applied to imports from producers/exporters who are not included in the sample is calculated on the basis of the dumping margins of the sampled producers/exporters, including dumping margins of those who do not qualify for individual treatment in accordance with Article 9(5) of the Basic AD Regulation;
- (e) Article I of the GATT 1994 since, by laying down additional conditions for Chinese exporters/producers to benefit from an individual dumping margin and an individual anti-dumping duty, the EC fails to accord to China advantages granted to market economies;

¹ OJ L 56, 6.3.1996, pp. 1-20.

² OJ L 29, 31.1.2009, p.1.

- (f) Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organisation and Article 18.4 of the AD Agreement since the EC has not taken all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the GATT 1994 and the AD Agreement.
- (g) Article X:3(a) of the GATT by not administering the provisions of Article 9(5) of the Basic AD Regulation in a uniform, impartial and reasonable manner.

II. 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 CHINA (THE "DEFINITIVE REGULATION")

Through the Definitive Regulation, the EC established for Chinese producers/exporters of certain iron or steel fasteners dumping margins ranging from 0% to 115,4% and imposed a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in China ranging from 0% to 85%.

China submits that this measure is inconsistent, at least, with the following provisions of the *AD Agreement* and of the *GATT 1994*:

- (a) Article 6.1.1 of the AD Agreement and Part I, paragraph 15 of the Protocol on the Accession of the People's Republic of China ("China's Protocol of Accession") and paragraph 151 (d) and (e) of the Working Party Report on the Accession of China because the EC granted to Chinese exporters/producers only 15 days as of the date of publication of the Notice of Initiation in the Official Journal of the European Union to submit their completed questionnaires for Market Economy Treatment and Individual Treatment;
- (b) Articles 6.10 of the AD Agreement because the EC required Chinese exporters to demonstrate, on the basis of substantiated claims, that they fulfil all the "individual treatment" criteria listed in Article 9(5) of the Basic AD Regulation as a pre-requisite to benefit from an individual dumping margin;
- (c) Article 9.2 of the AD Agreement because the EC required Chinese exporters to demonstrate, on the basis of substantiated claims, that they fulfil all the "individual treatment" criteria listed in Article 9(5) of the Basic AD Regulation as a pre-requisite to benefit from an individual anti-dumping duty;
- (d) Article I of the GATT 1994 because the EC does not impose the individual treatment conditions listed in Article 9(5) of the Basic AD Regulation to exporters/producers from market-economy countries;
- (e) Article 12.2.2 of the AD Agreement and paragraph 151 (f) of the Working Party Report on the Accession of China because the EC failed to substantiate the reasons for accepting and/or rejecting the request of individual exporters/producers to benefit from individual treatment;
- (f) Article 5.4 of the AD Agreement because the EC initiated the anti-dumping proceeding on the basis of a complaint by the Community producers allegedly representing 27% of the total domestic production in the EC while (i) the EC failed to examine properly before the initiation whether the application has been made by or

on behalf of the domestic industry and (ii) the EC improperly concluded that the application had been made by or on behalf of the domestic industry;

- (g) Articles 2.1 and 2.6 of the AD Agreement by including in the scope of the product under consideration both standard and special fasteners as "like" products despite their readily apparent differences and uses;
- (h) Article 2.4 of the AD Agreement and Article VI:1 of the GATT 1994 by failing to make a fair comparison between the export price and the normal value; in particular, by failing to make a product comparison on the full product control number and without making the necessary adjustments for differences physical or otherwise, affecting price comparability;
- (i) Article 2.4.2 of the AD Agreement and Article VI:1 of the GATT 1994 by excluding certain export sales from the dumping margin calculation;
- (j) Articles 3.1 and 3.2 of the AD Agreement because the EC failed to make a product comparison on the full product control number and did not make the appropriate adjustments for the differences affecting price comparability when determining the price undercutting margin;
- (k) Articles 4.1, 3.1, 3.4 and 3.5 of the AD Agreement because the EC failed to make an injury determination with respect to the relevant domestic industry as defined in Article 4.1 of the AD Agreement and/or is not based on positive evidence or does not include an objective examination in accordance with Article 3.1 of the AD Agreement:
 - (i) The EC improperly excluded from the "domestic industry" all producers that did not make themselves known within 15 days from the date of initiation of the investigation or that did not support the complaint;
 - (ii) The EC failed to include in "the domestic industry" domestic producers accounting for a major proportion of the total EC production;
 - (iii) The EC failed to determine which proportion of the total domestic production was represented by the EC producers constituting the domestic industry throughout the investigation period;
 - (iv) The EC conducted the injury determination on the basis of a sample of producers accounting for only 17.5 per cent of the total EC production of the like product in 2006;
 - (v) The EC failed to exclude from the definition of the domestic industry producers that are related to producers/exporters or importers or are themselves importers of the allegedly dumped product.
- (l) Article 3.1, 3.2, 3.4 and 3.5 of the *AD Agreement* because the EC failed to exclude from the volume of dumped imports, imports from Chinese producers that were found not to be dumping and by including in the volume of dumped imports all imports from non-sampled producers;
- (m) Articles 3.1, 3.2 and 3.4 of the *AD Agreement* because the EC failed to make an objective examination of the impact of the alleged dumped imports on the domestic

industry (including all relevant economic factors and indices having a bearing on the state of the industry) that is based on positive evidence;

- (n) Articles 3.1, 3.2, 3.4 and 3.5 of the *AD Agreement* by failing to weigh properly and reasonably factors other than the alleged dumped imports in its examination of injury and causation, including imports from third countries, increasing costs of raw materials, competition by EC producers not supporting the complaint, and export performance of the EC producers;
- (o) Articles 6.2 and 6.4 of the *AD Agreement* and paragraph 151 (c)(e) of the *Working Party Report on the Accession of China* because the EC failed to ensure throughout the investigation to Chinese producers/exporters the full opportunity for the defence of their interests and failed to provide timely opportunities for them to see all information that is relevant to the presentation of their cases, including, but not limited to the composition of the domestic industry, data concerning normal value determination, information on the adjustments for differences affecting price comparability, Eurostat data on the basis of which are based the total EC production and EC consumption figures;
- (p) Articles 6.2 and 6.9 of the *AD Agreement* because the EC failed to inform the interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures, including, but not limited to the following elements: data concerning the normal value determination and information on how the price comparison was carried out, including data on the adjustments for differences affecting price comparability;
- (q) Articles 6.2, 6.4, 6.5 and 6.5.1 of the *AD Agreement* because the EC failed to ensure that domestic producers provided non-confidential summaries of confidential information they submitted or because the EC wrongly treated information as being confidential, thereby preventing Chinese producers to have the full opportunity for the defence of their interests;
- (r) Article 6.5 of the *AD Agreement* because the EC disclosed the document entitled "Assessment of Market Economy Treatment Claims by nine producers in the PRC" (DG TRADE/H3/D(2008) that contains confidential information which pertains to different Chinese producers that claimed MET.

The EC's measures therefore nullify and impair benefits accruing to China under the *AD Agreement*, the *GATT 1994*, the *Marrakech Agreement Establishing the World Trade Organisation* and *China's Protocol of Accession*.

China requests that the panel be established with the standard terms of reference, in accordance with Article 7 of the DSU.

China asks that this request for the establishment of a panel be placed in the agenda for the next meeting of the Dispute Settlement Body, which is scheduled to take place on 23 October 2009.
