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**CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY
MEASURES ON BARLEY FROM AUSTRALIA**

REPORT OF THE PANEL

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1 COMPLAINT BY AUSTRALIA

1.1. On 16 December 2020, Australia requested consultations with 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), 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) and Article 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) with respect to measures imposing anti-dumping duties and countervailing duties on barley imported from Australia.¹

1.2. Australia alleged that China's measures appeared to be inconsistent with China's obligations including under certain provisions of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement.

1.3. According to Australia, the challenged measures were set forth in Ministry of Commerce of the People's Republic of China (MOFCOM) Notice No. 14 of 2020 (18 May 2020), including any and all annexes and any amendments thereof, and Notice No. 15 of 2020 (18 May 2020), including any and all annexes and any amendments thereof.²

1.4. Consultations were held on 28 January 2021, but failed to resolve the dispute.

2 PANEL ESTABLISHMENT AND COMPOSITION

2.1. On 15 March 2021, Australia requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference.³

2.2. In its panel request, Australia alleged that China's measures imposing anti-dumping and countervailing duties on barley from Australia were inconsistent with China's commitments and obligations including under the following provisions of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement:

- a. Articles 1, 2.1, 2.2, 2.3, 2.4, and 2.4.2, 2.6, 3.1, 3.2, 3.4, 3.5, 3.6, 4.1, 5.1, 5.2, 5.3, 5.4, 5.8, 6.1, 6.2, 6.4, 6.5.1, 6.6, 6.8 and paragraphs 1, 3, 5, 6 and 7 of Annex II, 6.9, 6.10, 9.1, 9.2, 9.3, 12.2 and 12.2.2 of the Anti-Dumping Agreement;
- b. Articles 1.1, 1.2, 2.1, 2.2, 2.4, 10, 11.1, 11.2, 11.3, 11.4, 11.9, 12.1, 12.3, 12.4.1, 12.5, 12.7, 12.8, 15.1, 15.2, 15.4, 15.5, 15.6, 16.1, 19.4, 22.3, 22.5, 32.1 and footnote 46 of the SCM Agreement; and
- c. Article VI of the GATT 1994.⁴

2.3. Australia also alleged that the measures in question appeared to nullify or impair the benefits accruing to Australia directly or indirectly under the cited agreements.

2.4. At its meeting on 28 May 2021, the Dispute Settlement Body (DSB) established a panel pursuant to the request of Australia in document WT/DS598/4, in accordance with Article 6 of the DSU.⁵

2.5. The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by Australia in document

¹ Request for consultations by Australia, WT/DS598/1 (Australia's consultation request).

² Request for consultations by Australia, WT/DS598/1 (Australia's consultation request).

³ Request for the establishment of a panel by Australia, WT/DS598/4 (Australia's panel request).

⁴ Request for the establishment of a panel by Australia, WT/DS598/4 (Australia's panel request).

⁵ DSB, Minutes of the meeting held on 28 May 2021, WT/DSB/M/452.

WT/DS598/4 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁶

2.6. On 25 August 2021, Australia requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU. On 3 September 2021, the Director-General accordingly composed the Panel as follows:

Chairperson: Ms Enie NERI DE ROSS

Members: Mr Jose Antonio DE LA PUENTE LEÓN
Ms Catharina Janse VAN VUUREN

2.7. Brazil, Canada, the European Union, India, Japan, Mexico, New Zealand, Norway, the Russian Federation, Singapore, Ukraine, the United Kingdom, and the United States notified their interest in participating in the Panel proceedings as third parties.

3 PANEL PROCEEDINGS

3.1. After consultation with the parties, the Panel adopted its Working Procedures, Additional Working Procedures on business confidential information (BCI) and timetable on 22 October 2021. The Panel subsequently revised the timetable on 8 February, 1 April, 7 and 13 June, 2, 16 and 30 December 2022, and on 21 February 2023.

3.2. The Panel held the first substantive meeting with the parties on 8 and 10 March 2022. Due to COVID-19-related travel restrictions, the meeting was held in a hybrid format under which the Panel convened in Geneva to conduct the hearing from the WTO premises, while the parties participated virtually via Webex from their capitals. Geneva-based representatives of the parties observed the conduct of the meeting in person from the WTO premises.

3.3. The Panel initially planned to hold the third-party session on 9 March 2022. However, taking note of communications received from Ukraine and Russia respectively on 1 and 2 March 2022, as well as from Australia, China, Canada, the European Union, and the United Kingdom on 4 March 2022, and the United States on 5 March 2022, all concerning the third-party session, the Panel decided to postpone the third-party session with the view to preserving the rights of the third parties.

3.4. The Panel scheduled the second substantive meeting for 27-28 June 2022 with the intent of holding the meeting in person at the WTO premises. Due to the limited availability of the parties, however, the Panel decided to postpone the meeting by one month. The third-party session took place on 26 July in a hybrid format, with certain delegations participating in person from the WTO premises and others participating remotely via Webex. The second substantive meeting with the parties took place on 27 and 28 July in the same hybrid format as the first substantive meeting.

3.5. On 19 September 2022, the Panel issued the descriptive part of its Report to the parties. The Panel issued its Interim Report to the parties on 16 December 2022. The Panel issued its Final Report to the parties on 15 March 2023.

3.6. On 11 April 2023, the parties requested the Panel to suspend its work, in accordance with Article 12.12 of the DSU, until 11 July 2023 while the parties were discussing a possible mutually agreed solution to the dispute. The Panel granted that request. On 10 July 2023, the parties requested the Panel to further suspend its work, pursuant to Article 12.12 of the DSU, for an additional period of one month until 11 August 2023. The Panel also agreed to that request.

⁶ Constitution note of the Panel, WT/DS598/6.

4 NOTIFICATION OF MUTUALLY AGREED SOLUTION

4.1. By a joint communication dated 11 August 2023, pursuant to Article 3.6 of the DSU, the parties notified the DSB that they had reached a mutually agreed solution to the matter raised in this dispute.⁷ On the same date, the parties also informed the Panel of their mutually agreed solution.

4.2. The Panel takes note of the mutually agreed solution between the parties to the dispute and recalls Article 3.7 of the DSU, which provides that "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred."

4.3. The Panel also takes note of Article 12.7 of the DSU, which provides that "[w]here a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached."

4.4. Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.

⁷ This was circulated as document WT/DS598/11 on 14 August 2023.