



28 June 2021

(21-5166)

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Original: English

## CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON WINE FROM AUSTRALIA

### REQUEST FOR CONSULTATIONS BY AUSTRALIA

The following communication, dated 22 June 2021, from the delegation of Australia to the delegation of China, is circulated to the Dispute Settlement Body 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"), **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 anti-dumping and countervailing measures on bottled wine in containers of 2 litres or less imported from Australia, as set forth in Ministry of Commerce of the People's Republic of China ("MOFCOM"):

- Notice No. 59 of 2020 (27 November 2020);
- Notice No. 58 of 2020 (10 December 2020);
- Notice No. 6 of 2021 (26 March 2021); and
- Notice No. 7 of 2021 (26 March 2021),

including any and all annexes and any amendments thereof, and the initiation of and conduct of the investigations leading to the issuing of those notices.

China's measures appear to be inconsistent with China's obligations including under the provisions of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement. In particular, China's anti-dumping and countervailing measures on wine from Australia appear to be inconsistent with China's obligations under, among others, the following provisions of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement:

### **Interpretation and application of "like product", "product under consideration" and "domestic industry"**

- i. Articles 2.1, 2.6, 3.1 and 5.2 (i) and (iv) of the Anti-Dumping Agreement and Articles 11.2(i) and (iv), 15.1 and footnote 46 of the SCM Agreement because, *inter alia*, China incorrectly defined the "product under consideration" and the "like product", including, *inter alia*, by failing to account for the different qualities of wine and product differentiation within the wine market.
- ii. Article 4.1 of the Anti-Dumping Agreement and Article 16.1 of the SCM Agreement because, *inter alia*, China erred in its interpretation and application of the definition of "domestic industry".

### Initiation of the investigations

- iii. Articles 5.1, 5.2 and 5.4 of the Anti-Dumping Agreement and Articles 11.1, 11.2 and 11.4 of the SCM Agreement because, *inter alia*, China improperly initiated investigations on the basis of applications that were not made "by or on behalf of the domestic industry" and because, *inter alia*, China failed to determine, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made "by or on behalf of the domestic industry", and because, *inter alia*, China failed to properly determine the production volume of the like products.
- iv. Articles 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement and Articles 11.2, 11.3 and 11.9 of the SCM Agreement because, *inter alia*, China initiated investigations without sufficient evidence, China failed to examine or review the accuracy and adequacy of the evidence provided in the application, and China failed to reject the application or terminate promptly the investigation given the lack of sufficient evidence.

### Conduct of the investigations

- v. Articles 6.1, 6.1.1, 6.1.2, 6.1.3 and 6.2 of the Anti-Dumping Agreement and Articles 12.1, 12.1.1, 12.1.2, 12.1.3 and 12.2 of the SCM Agreement because, *inter alia*, China did not provide all interested parties and interested Members ample opportunity to present all relevant information and evidence, did not ensure the prompt availability to known exporters the full text of the written application, and did not give due consideration to requests for extensions and grant those extensions for which cause had been shown that it was practicable to grant.
- vi. Article 6.2 of the Anti-Dumping Agreement because, *inter alia*, China did not provide all interested parties a full opportunity for the defence of their interests.
- vii. Article 6.4 of the Anti-Dumping Agreement and Article 12.3 of the SCM Agreement because, *inter alia*, China failed to provide timely opportunities for all interested parties to see all information that was relevant to the presentation of their cases, and to prepare presentations on the basis of this information, notwithstanding that it was practicable to do so.
- viii. Articles 6.4 and 6.5.1 of the Anti-Dumping Agreement, and Articles 12.3 and 12.4.1 of the SCM Agreement because, *inter alia*, China failed to provide, or require the applicant and interested parties to provide, adequate non-confidential summaries of allegedly confidential information.
- ix. Articles 6.6 of the Anti-Dumping Agreement and Articles 12.5 of the SCM Agreement because China failed during the course of the investigation to satisfy itself as to the accuracy of the information supplied by interested parties, including *inter alia* the accuracy of the domestic price of wine, and the accuracy of the statistics of various economic indicators related to the state of China's wine industry.
- x. Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement because, *inter alia*, China failed to disclose to the interested parties the essential facts under consideration which form the basis for the determinations, and because it failed to do so in sufficient time for the parties to defend their interests.

### The use of facts available

- xi. Article 6.8, and Annex II, of the Anti-Dumping Agreement and Article 12.7 of the SCM Agreement because, *inter alia*, China improperly based its determinations on the facts available and because, *inter alia*, it:
  - a. failed to take into account information that was verifiable, appropriately submitted so that it could be appropriately used in the investigation without undue difficulties, which was supplied in a timely fashion, and, where

- applicable, which was supplied in a medium or computer language requested by China;
- b. improperly without adequate justification disregarded information provided by interested parties acting to the best of their abilities;
  - c. failed to inform supplying parties forthwith for the reasons for not accepting evidence or information or provide an opportunity to provide further explanations within a reasonable period;
  - d. failed to give reasons for the rejection of such information in its published determination; and
  - e. failed to exercise special circumspection in making its findings.
- xii. Article 6.13 of the Anti-Dumping Agreement and 12.11 of the SCM Agreement because, *inter alia*, China failed to take due account of difficulties experienced by interested parties in supplying information requested and failed to provide any assistance practicable.

#### **Imposition of provisional measures**

- xiii. Article 7.1 of the Anti-Dumping Agreement and Article 17.1 of the SCM Agreement because, *inter alia*, China imposed provisional measures without an investigation having been properly initiated in accordance with the provisions of, respectively, Article 5 of the Anti-Dumping Agreement and Article 11 of the SCM Agreement.
- xiv. Article 7.5 of the Anti-Dumping Agreement and Article 17.5 of the SCM Agreement because, *inter alia*, China imposed provisional measures without following the relevant provisions of, respectively, Article 9 of the Anti-Dumping Agreement and Article 19 of the SCM Agreement.
- xv. Article VI:5 of the GATT 1994, because, *inter alia*, China imposed both provisional anti-dumping duties and provisional countervailing duties to compensate for the same situation of alleged dumping and export subsidisation.

#### **Dumping determination**

- xvi. Article 2.1 of the Anti-Dumping Agreement because China failed to determine the existence of dumping as defined in Article 2.1.
- xvii. Articles 2.2, 2.2.1, 2.2.1.1 and 2.2.2 of the Anti-Dumping Agreement because, *inter alia*, China (i) improperly and without proper justification disregarded sales of the like product in the Australian domestic market in determining normal value, including *inter alia* because China failed to establish that either there were no sales of the like product in the ordinary course of trade in the Australian domestic market, or that, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales did not permit a proper comparison; and because China failed to disclose its methodology for determining normal value; (ii) failed to base its calculation of costs on the records kept by the exporter or producer under investigation; and (iii) failed to base the amounts for administrative, selling and general costs and for profits on actual data or other reasonable method.
- xviii. Article 2.3 of the Anti-Dumping Agreement, because, *inter alia*, China failed to determine export price on a reasonable basis, and because it failed to disclose its methodology for calculating export price.
- xix. Article 2.4 of the Anti-Dumping Agreement because, *inter alia*, China failed to make a fair comparison between the export price and normal value including by failing to adjust for factors affecting price comparability and failing to indicate what information was

necessary to make a fair comparison, and because it failed to disclose its methodology for determining both export price and normal value.

- xx. Article 2.4.2 of the Anti-Dumping Agreement, because, *inter alia*, China did not establish the margin of dumping on the basis of a comparison of all comparable export transactions.
- xxi. Article 6.10 of the Anti-Dumping Agreement because, *inter alia*, China did not determine individual margins of dumping for each known exporter or producer of wine concerned under investigation, and because, *inter alia*, China relied upon the use of samples that were not valid on the basis of the information available to the authorities at the time, and discouraged voluntary questionnaire responses.

### **Countervailing determination**

- xxii. Articles 1.1, 1.2, 2.1, 2.2 and 2.4 of the SCM Agreement because, *inter alia*, China improperly established, in respect of a range of programs, the existence of a subsidy, as defined in paragraph 1 of Article 1 of the SCM Agreement, including by improperly determining that funding allocations in respect of the programs constituted a "financial contribution" conferring a "benefit" on Australian producers of wine; and improperly determined the alleged subsidies were "specific" to "certain enterprises" within Australia; and because it failed to disclose its methodology for calculating the rate of subsidization.

### **Determination of injury and causation**

- xxiii. Articles 3.1, 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement, and Articles 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement, because, *inter alia*, on the matter of the alleged injury, China's determination was not based upon positive evidence and an objective examination, including in relation to: (i) the volume of dumped and subsidized imports including whether there was a significant increase in such imports; (ii) the effect of such imports on prices in the domestic market for like products including whether there has been significant price undercutting, depression or suppression; (iii) the consequent impact of those imports on domestic producers of such products including an examination of all relevant economic factors and indices having a bearing on the state of the industry; (iv) the causal relationship between those imports and the injury to the domestic industry including an examination of any known factors other than dumped imports, or an examination of all relevant evidence before the authorities.

### **Imposition of duties**

- xxiv. Article VI:2 of GATT 1994 and Article 9.1, 9.2, 9.3 and 9.4 of the Anti-Dumping Agreement because, *inter alia*, China: has imposed anti-dumping duties where all requirements for their imposition have not been fulfilled; has not imposed anti-dumping duties in appropriate amounts; has not imposed anti-dumping duties on an individual basis; and has imposed anti-dumping duties in excess of the margin of dumping that should have been established under Article 2 of the Anti-Dumping Agreement.
- xxv. Article VI:3 of the GATT 1994 and Article 19.4 of the SCM Agreement because, *inter alia*, China used an inadequate methodology to determine an amount of subsidization, and therefore improperly levied countervailing duties on imported Australian wine products in excess of the amount of subsidy found to exist.

### **Transparency**

- xxvi. Articles 12.1 and 12.1.1 of the Anti-Dumping Agreement and Articles 22.1 and 22.2 of the SCM Agreement, because, *inter alia*, China failed to provide in its public notice of the initiation of the investigation, or in a separate report, adequate information on the basis on which dumping is alleged in the application and a summary of factors on which the allegation of injury is based; and a description of the subsidy practice or practices to be investigated and a summary of the factors on which the allegation of injury is based.
- xxvii. Articles 12.2, 12.2.1 and 12.2.2 of the Anti-Dumping Agreement and Articles 22.3, 22.4 and 22.5 of the SCM Agreement because, *inter alia*, China failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material, and the reasons for acceptance or rejection of relevant arguments and claims.

### **Consequential claims**

- xxviii. Article VI of the GATT 1994 as a consequence of the breaches of the Anti-Dumping Agreement and the SCM Agreement described above.
  - xxix. Articles 1 and 18.1 of the Anti-Dumping Agreement as a consequence of the breaches of the Anti-Dumping Agreement described above.
  - xxx. Articles 10 and 32.1 of the SCM Agreement as a consequence of the breaches of the SCM Agreement and GATT 1994 described above.
3. China's measures also appear to nullify or impair the benefits accruing to Australia directly or indirectly under the cited agreements.
4. Australia reserves the right to address additional measures and claims under other provisions of the WTO Agreement regarding the above matters during the course of the consultations.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

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