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AUSTRALIA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON CERTAIN PRODUCTS FROM CHINA

REQUEST FOR CONSULTATIONS BY CHINA

The following communication, dated 24 June 2021, from the delegation of China to the delegation of Australia, 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 Australia pursuant to Articles 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), Article 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

I. MEASURES AT ISSUE

This request for consultations concerns the anti-dumping and countervailing measures imposed by Australia on imports of certain products originating in China, *inter alia*, wind towers, deep drawn stainless steel sinks and railway wheels.

The measures at issue mentioned above include any and all preliminary and final anti-dumping and countervailing duty measures which were issued by the Anti-Dumping Commission of the Department of Industry, Science, Energy and Resources of the Australian Government (hereinafter "the Commission"), include the determinations by the Commission to initiate the identified anti-dumping and countervailing duty investigations, the conduct of those investigations, final anti-dumping and countervailing duty determinations as well as definitive anti-dumping and countervailing duties imposed as results of those investigations, as well as any notices, annexes, decision memorandum, orders, amendments, or other instruments issued by the Commission in connection with the anti-dumping and countervailing duty measures as identified in the Appendix.

This request also concerns subsequent periodic and sunset reviews of the anti-dumping and countervailing duty orders in the proceedings at issue as specified in the Appendix. This request encompasses any other subsequent closely connected measure relating to the anti-dumping and countervailing duty orders in the proceedings at issue, including subsequent periodic review determinations and subsequent sunset review determinations.

II. LEGAL BASIS

A. Anti-Dumping Measures

The anti-dumping measures on wind towers, deep drawn stainless steel sinks and railway wheels appear to be inconsistent with Australia's obligations under the following provisions of the GATT 1994 and the Anti-Dumping Agreement:

1. Article 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because Australia did not calculate the costs on the basis of the records kept by the exporters or

producers under investigation and because Australia did not properly determine the costs of production;

2. Article 2.1 and 2.2 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because in constructing the normal value, Australia did not use the production cost in the country of origin;

3. Article 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement, because in constructing the normal value, Australia included costs not associated with the production and sale of the product under consideration;

4. Article 2.4 of the Anti-Dumping Agreement, because Australia did not make a fair comparison between the export price and the normal value and because Australia did not make due allowance for differences which affect price comparability;

5. Article 2.2 and 2.2.2 of the Anti-Dumping Agreement, because Australia did not properly determine the amounts for profits in accordance with the rules established under those articles;

6. Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994, because the amount of the anti-dumping duty imposed by the Australia exceeds the margin of dumping as established under Article 2 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994.

B. Countervailing Measures

China considers that the conduct of the identified countervailing duty investigation on deep drawn stainless steel sinks, as well as the countervailing duty determinations, orders, and any definitive countervailing duties imposed pursuant thereto, are inconsistent with the obligations of Australia under the SCM Agreement. More specific, China considers the Commission has applied unlawful standards and methodologies for these purposes in determining financial contribution, specificity, and benefit in respect of the alleged provision of inputs for less than adequate remuneration in the proceedings at issue as detailed below:

1. Article 1.1(a)(1) of the SCM Agreement, because the Commission incorrectly determined, or did not have a sufficient basis to determine financial contribution within the meaning of that provision;

2. Article 1.1(b) and Article 14(d) of the SCM Agreement, because the Commission improperly found that the alleged provision of goods for less than adequate remuneration conferred a benefit upon the recipient, and improperly calculated the amount of any benefit allegedly conferred, including, its erroneous findings that prevailing market conditions in China were "distorted" as the basis for rejecting actual transaction prices in China as benchmark;

3. Article 2.1(c) of the SCM Agreement, because the Commission failed to make a proper determination on the basis of positive evidence that the alleged provision of input goods for less than adequate remuneration was specific to an enterprise or industry or group of enterprises or industries;

4. Articles 11.1, 11.2, and 11.3 of the SCM Agreement, because:

4.1 the Commission initiated countervailing duty investigations in respect of the alleged provision of inputs for less than adequate remuneration, in the absence of sufficient evidence in the petition to determine the financial contribution within the meaning of Article 1.1(a)(1) of the SCM Agreement, and in the absence of a sufficient review of the petition by the Commission in respect of this allegation;

4.2 the Commission initiated countervailing duty investigations in respect of the alleged provision of inputs for less than adequate remuneration, in the absence of sufficient evidence in the petition to support an allegation that any such subsidy would be specific under Article 2.1(c) of the SCM Agreement, and in the absence of a sufficient review of the petition by the Commission in respect of this allegation.

The above-mentioned measures of the Commission appear to nullify or impair, directly or indirectly, the benefits accruing to China under the mentioned agreements.

China reserves the right to raise additional claims and legal matters in respect of the mentioned issues, including any amendment, replacement, extension, implementation measures or other related measures, in the course of the consultations.

China looks forward to receiving a response to the present request from Australia and to establishing a mutually convenient date for consultations.

Appendix

A. Wind Towers ¹

No.	Case Type	Legal Instruments	Date (latest update)
1	Investigation	EPR 221: Notice and Final Report concerning the Dumping of Wind Towers Exported from China	16 April 2014
2	Continuation	EPR 487: Findings and Final Report of the Inquiry into the Continuation of Anti-Dumping Measures Applying to Wind Towers Exported from China	27 March 2019 ²

B. Deep Drawn Stainless Steel Sinks³

No.	Case Type	Legal Instruments	Date (latest update)
1	Investigation	EPR 238: Notice and Final Report concerning the Alleged Dumping of Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China and Alleged Subsidisation of Deep Drawn Stainless Steel Sinks Exported from China	26 March 2015
2	Review	EPR 352	21 November 2016
3	Review	EPR 459	15 June 2018
4	Review	EPR 461	12 October 2018
5	Continuation	EPR 517	28 February 2020

C. Railway Wheels⁴

No.	Case Type	Legal Instruments	Date (latest update)
1	Investigation	EPR 466: Notice and Final Report concerning the Alleged Dumping of Certain Railway Wheels Exported from China	16 July 2019

¹ See https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system/anti-dumping-commission-archive-cases?field_adc_commodities_tid=2055&field_adc_case_type_tid=All&field_adc_country_tid=2062&combine=

² See <https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system/anti-dumping-commission-archive-cases/487>

³ See https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system/anti-dumping-commission-archive-cases?field_adc_commodities_tid=2022&field_adc_case_type_tid=All&field_adc_country_tid=2062&combine=

⁴ See https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system/anti-dumping-commission-archive-cases?field_adc_commodities_tid=2043&field_adc_case_type_tid=All&field_adc_country_tid=2062&combine=