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

REPORT OF THE PANEL

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## 1 COMPLAINT BY AUSTRALIA

1.1. On 22 June 2021, 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 anti-dumping and countervailing measures on bottled wine in containers of 2 litres or less imported from Australia.<sup>1</sup>

1.2. Consultations were held on 9 August 2021 but did not resolve the dispute.

## 2 PANEL ESTABLISHMENT AND COMPOSITION

2.1. On 16 September 2021, Australia requested the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU, Article 17.4 of the Anti-Dumping Agreement, and Article XXIII of the GATT 1994, with standard terms of reference.<sup>2</sup> At its meeting on 26 October 2021, the Dispute Settlement Body (DSB) established a panel pursuant to the request of Australia in document WT/DS602/2, in accordance with Article 6 of the DSU.<sup>3</sup>

2.2. 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 WT/DS602/2 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.<sup>4</sup>

2.3. Following the agreement between the parties, the Panel was composed on 4 March 2022 as follows:

Chairperson: Mr Faizullah KHILJI  
Members: Ms Elaine FELDMAN  
Mr Marco Tulio MOLINA TEJEDA

2.4. Brazil, Canada, the European Union, India, Japan, the Republic of Korea, Mexico, New Zealand, Norway, the Russian Federation, Singapore, Switzerland, Chinese Taipei, Türkiye, Ukraine, the United Kingdom, the United States, and Viet Nam notified their interest in participating in the Panel proceedings as third parties.

## 3 PANEL PROCEEDINGS

### 3.1 General

3.1. On 14 March 2022, before the Panel's organizational meeting with the parties, the Panel proposed a draft timetable to the parties. That draft timetable envisaged that Australia would submit its first written submission on 8 April 2022, China would submit its first written submission on 29 April 2022, third parties would submit their submissions on 13 May 2022, and that the first substantive meeting of the Panel with the parties would take place on 12-14 July 2022. In the context of the organizational meeting with the Panel, which was held on 21 March 2022, both parties asked for extensions to the deadlines for submitting their respective first written submissions. Australia requested that the Panel add three weeks to the proposed deadlines for each of Australia's and China's first written submissions, and indicated that the first substantive meeting could then take place from 1 August 2022 onwards. China did not object to Australia's extension

<sup>1</sup> Request for consultations by Australia, WT/DS602/1 (Australia's consultations request).

<sup>2</sup> Request for the establishment of a Panel by Australia, WT/DS602/2 (Australia's panel request). Following China's decision not to impose definitive countervailing duties on bottled wine from Australia, Australia did not include in its panel request matters related to China's measures imposing provisional countervailing duties on bottled wine from Australia. (Ibid. para. 3).

<sup>3</sup> DSB, Minutes of meeting held on 26 October 2021, WT/DSB/M/457, para. 4.4.

<sup>4</sup> Constitution note of the Panel, WT/DS602/4.

request but asked, in turn, to have eight weeks to prepare its first written submission, counting from the due date of Australia's first written submission.

3.2. On 30 March 2022, after consultation with the parties, the Panel adopted its Working Procedures and a timetable granting the parties' requests for extensions to file their first written submissions. Under this timetable, Australia's first written submission was therefore due on 29 April 2022, China's first written submission was due on 24 June 2022, and the third-party submissions were due on 8 July 2022. The Panel subsequently revised its Working Procedures on 19 April 2022, and its timetable on 25 April, 5 May, 19 May, 21 September, and 6 October 2022, and 10 March and 26 June 2023.

3.3. On 22 April 2022, China submitted to the Panel a request for a preliminary ruling regarding the Panel's terms of reference. On 25 April 2022, the Panel requested Australia to provide its response to China's request for a preliminary ruling by 20 May 2022. On 5 May 2022 the Panel invited third parties to submit their comments on China's request for a preliminary ruling, if any, by 30 May 2022. On 13 May 2022, Australia requested three additional weeks to submit its response to China's request for a preliminary ruling. On 16 May 2022 China in turn requested 20 additional days to file its first written submission. After considering these additional extension requests by the parties, on 19 May 2022 the Panel extended by three working days the deadlines for Australia's response to China's request for a preliminary ruling, for China's first written submission, for third parties' comments on the request for a preliminary ruling, and for third-party submissions.

3.4. As a result, on 29 April 2022, Australia submitted its first written submission. On 25 May 2022, Australia submitted its response to China's request for a preliminary ruling. On 2 June 2022, Canada, the European Union, Japan, and the United States submitted comments on China's request for a preliminary ruling. On 29 June 2022, China submitted its first written submission. On 13 July 2022, Brazil, Canada, the European Union, Japan, New Zealand, Chinese Taipei, the United Kingdom, and the United States submitted their third-party submissions.

3.5. The Panel held the first substantive meeting with the parties on 6 and 7 September 2022 and the third-party session on 7 September 2022. At the parties' request, the meeting was held in a hybrid format, allowing delegates of the parties and third parties to participate either in person or remotely.<sup>5</sup>

3.6. On 21 September 2022, the Panel sent to the parties an updated timetable, requesting second written submissions by 28 October 2022. On 28 September 2022, Australia asked the Panel to extend the deadline for second written submissions to 25 November 2022, and China asked the Panel to extend the same deadline to 28 November 2022. On 6 October 2022, the Panel granted the parties' requests for extensions. Therefore, the parties submitted their second written submissions on 28 November 2022.

3.7. The written submissions of both parties were voluminous throughout the proceedings. For example, China's request for a preliminary ruling, Australia's response to it, and the parties' first and second written submissions totalled 2068 pages.<sup>6</sup>

3.8. The Panel held the second substantive meeting with the parties on 28 February 2023. At the parties' request, the second substantive meeting was also held in a hybrid format.<sup>7</sup>

3.9. On 21 April 2023, the Panel issued the descriptive part of its Report to the parties. The Panel was originally scheduled to issue the Interim Report to the parties on 30 June 2023. However, the

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<sup>5</sup> Panel communication to the parties and third parties (27 July 2022).

<sup>6</sup> This figure is the sum of the page length of the following submissions: China's request for a preliminary ruling (49 pages); Australia's response to China's preliminary ruling request (104 pages); Australia's first written submission (394 pages); China's first written submission (735 pages); Australia's second written submission (366 pages); China's second written submission (420 pages). This figure thus excludes the exhibits, the written versions of the parties' oral statements, the parties' written answers to questions from the Panel and the parties' comments on each other's answers, and all the submissions of the third parties.

In concluding the first substantive meeting, the Panel requested the parties to be as concise as possible in preparing their second written submissions.

<sup>7</sup> Panel communication to the parties (1 February 2023).

Panel required more time to finalize its findings. The Panel therefore issued its Interim Report to the parties on 28 July 2023. The Panel issued its Final Report to the parties on 9 October 2023.

### **3.2 Request for suspension under Article 12.12 of the DSU**

3.10. The Panel's Final Report was scheduled to be circulated on 10 November 2023. On 30 October 2023, the parties jointly requested the Panel to suspend its work until 31 March 2024, pursuant to Article 12.12 of the DSU.

3.11. Article 12.12 of the DSU provides that the Panel may suspend its work at any time at the request of the complaining party for a period not exceeding 12 months.

3.12. In view of this, on 30 October 2023 the Panel granted the suspension requested by the parties, until 31 March 2024.

3.13. The Panel informed the DSB of this suspension in document WT/DS602/7.

### **3.3 Notification of a mutually agreed solution**

3.14. By a letter dated 29 March 2024, the parties informed the Panel that they had reached a mutually agreed solution. A similar notification to the DSB was circulated as document WT/DS602/8 on 3 April 2024.

3.15. This Report is circulated pursuant to Article 12.7 of the DSU.

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