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

REQUEST FOR CONSULTATIONS BY AUSTRALIA

The following communication, dated 16 December 2020, 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.

1. 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 measures imposing anti-dumping duties and countervailing duties on barley imported from Australia, as 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. 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.

2. In particular, China's anti-dumping and countervailing duty measures on barley 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.

- i. Articles 2.1, 2.6, 3.1, 3.6 and 5.2 (i) and (iv) of the Anti-Dumping Agreement and Articles 6, 11.2(i) and (iv), 15.1, footnote 46 and 15.6 of the SCM Agreement because, *inter alia*, China incorrectly defined the product under consideration and also incorrectly defined the like products.
- 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".
- 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".
- 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.

- v. Articles 6.1 and 6.2 of the Anti-Dumping Agreement and Articles 12.1 and 12.2 of the SCM Agreement because, *inter alia*, China did not provide all interested parties and interested Members the opportunity to present all relevant information and evidence.
- 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.
- viii. Article 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 barley, and the accuracy of the statistics of various economic indicators related to the state of China's barley industry.
- x. 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 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.
- xi. 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 in sufficient time for the parties to defend their interests.
- xii. 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 barley concerned under investigation.
- xiii. 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.

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- xiv. Article 2.1 of the Anti-Dumping Agreement because China failed to determine the existence of dumping as defined in Article 2.1.
- xv. Article 2.2 of the Anti-Dumping Agreement because, *inter alia*, China improperly determined normal value by reference to third country sales without proper justification, and its choice of third country sales was not "comparable", "representative" or from an "appropriate third country".
- xvi. Article 2.3 of the Anti-Dumping Agreement, because, *inter alia*, China did not determine export price on a reasonable basis when it improperly discarded the information provided by exporters and producers on the export price of barley, and determined the export price by reference to third party information.
- xvii. 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 including failing to disclose its methodology for determining both export price and normal value.
- xviii. 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.
- xix. Articles 1.1, 1.2, 2.1, 2.2 and 2.4 of the SCM Agreement because, *inter alia*, China improperly established the existence of a subsidy, as defined in paragraph 1 of Article 1 of the SCM Agreement, including by improperly determining a "benefit" was conferred on Australian producers of barley; and improperly determined the alleged subsidy was specific to certain enterprises within Australia.
- xx. 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 analysis of the effects of imports under investigation and alleged causal link was not based upon an objective examination of positive evidence, an examination of all relevant economic factors and indices having a bearing on the state of the industry, an examination of any known factors other than dumped imports, or an examination of all relevant evidence before the authorities.
- xxi. Article VI:2 of GATT 1994 and Article 9.1, 9.2 and 9.3 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.
- xxii. 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 barley products in excess of the amount of subsidy found to exist.
- xxiii. Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement and Articles 22.3 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.
- xxiv. Article VI of the GATT 1994 as a consequence of the breaches of the Anti-Dumping Agreement and the SCM Agreement described above.
- xxv. Article 1 of the Anti-Dumping Agreement as a consequence of the breaches of the Anti-Dumping Agreement described above.

xxvi. 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.
