



31 January 2022

(22-0736)

Page: 1/4

Original: English

CHINA - MEASURES CONCERNING TRADE IN GOODS AND SERVICES

REQUEST FOR CONSULTATIONS BY THE EUROPEAN UNION

The following communication, dated 27 January, from the delegation of the European Union 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"), in conjunction with Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 24.8 of the Trade Facilitation Agreement ("TFA"), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement") and Article XXII of the General Agreement on Trade in Services ("GATS") in relation to measures adopted by, and attributable to, China, affecting the importation of goods from, and the exportation of goods to, the European Union ("EU") and affecting trade in services between the EU and China. These measures appear to be inconsistent with the Marrakesh Agreement Establishing the World Trade Organization, in particular Articles I:1, V:6, X:3(a) and XI:1 of GATT, Article XVII of GATT and Article 1.2 of China's Protocol of Accession to the WTO in conjunction with paragraphs 46 and 342 of the Working Party Report, Articles 3, 5, 7, 9 and 10 of the TFA, Article 2 and Annex C in conjunction with Article 8 of the SPS Agreement, and Articles II, VIII, XI, XVI and XVII of GATS.

1. Background to the dispute

Beginning in or around the final quarter of 2021, importers of products originating in Lithuania and/or transiting through Lithuanian ports and/or with some other link to Lithuania began encountering restrictions on securing customs clearance for their goods to enter Chinese territory. Those restrictions include in particular: (i) error messages on the IT systems used to input data necessary to secure customs clearance from the Chinese customs authorities; (ii) containers being blocked in Chinese ports pending customs clearance; (iii) failures on the part of the Chinese customs authorities to process requests for customs clearance in due time or at all. Those restrictions are novel, numerous, recurrent, persisting and strongly correlated in temporal and substantive terms, as well as in terms of the provenance of the goods.

Commencing in or around the final quarter of 2021, entities established in Lithuania began encountering difficulties relating to goods due to be exported from China to Lithuania. Those difficulties include failures on the part of the Chinese customs authorities to process requests for customs clearance for export in due time, or at all. Those restrictions have similar characteristics.

Since August 2021, there have similarly been reports of entities established in Lithuania encountering difficulties in obtaining financial services from Chinese entities.

Beginning in or around the final quarter of 2021, there have similarly been reports of shipments of products covered by SPS certificates issued by Lithuanian authorities being refused customs clearance by Chinese customs authorities.

2. The measures at issue

The measures at issue include the adoption, maintenance and application through its actions or omissions, in law and in fact, by China, of:

- import bans or import restrictions on the products at issue, from the EU;
- export bans or export restrictions on the products at issue from China to the EU;
- restrictions or prohibitions on the supply of services from the EU or by a service supplier from the EU in the territory of China or in respect of EU consumers of services provided by Chinese service suppliers.

The means through which China imposes and administers these measures operate collectively but also separately, and affect the importation or exportation of goods or the supply of services from or to Lithuania, or showing a link to Lithuania for example through the presence of Lithuanian components. These measures predominantly concern goods or services from or destined for Lithuania or linked in various ways to Lithuania, but also have an effect on supply chains throughout the EU.

The above-described complex of measures are inter-linked and show a targeted prohibition or restriction relating to trade in goods or services from or to Lithuania or linked to Lithuania which is intended to be generally applicable.

These measures are attributable to China which, through actions of the Government, and/or through measures designed, promulgated, or applied by entities (including local government bodies, non-governmental bodies and state-owned enterprises) in Chinese territory acting as, under the authority of, or in concert with the Government, has encouraged, incentivised or otherwise instigated a coordinated policy designed to restrict trade from and with the EU, and more specifically, Lithuania, in a manner that is inconsistent with the terms of the covered agreements.

In particular, the acts or omissions of the General Administration of Customs China resulting in the failure to take administrative actions or decisions necessary for customs clearance, has the effect of prohibiting or restricting importation.

China also grants less favourable treatment for transit for products with a link to Lithuania as described above.

Furthermore, it appears that Chinese State Trading Enterprises are not acting in conformity with the principle of non-discriminatory treatment in their purchases or sales involving either imports or exports from the EU with a link to Lithuania as described above.

China arbitrarily or unjustifiably discriminates between the EU and other Members where identical or similar conditions prevail, including between China's own territory and that of the EU, in applying sanitary and phytosanitary measures, and applies sanitary and phytosanitary measures in a manner which constitutes a disguised restriction on international trade, when goods with a link to Lithuania are involved.

Moreover, China has put in place restrictions or treatment less favourable than that accorded to service suppliers from other Members or domestic service suppliers, in relation to the supply of services from the EU, by a service supplier from the EU in the territory of China, and as regards EU service consumers seeking services from Chinese service suppliers, when those services, suppliers or consumers had a link to Lithuania.

3. Legal basis for the complaint in respect of China's measures

The measure or series of measures appears to be inconsistent with China's obligations under the covered agreements, in particular,

-
- Article I:1 of GATT, because China is not according immediately and unconditionally to the like product originating in or destined for the territory of the EU with respect to all rules and formalities in connection with importation and exportation, the advantages, favours, privileges or immunities granted by China to any product originating in or destined for any other country.
 - Article V:6 of GATT, because China accords to products which have been in transit through the territory of another Member treatment less favourable than that which it accords to such products that have been transported from their place of origin to their destination without going through the territory of that other Member.
 - Article X:3(a) of GATT, because China administers its laws, regulations, decisions and rulings of the kind described in Article X:1 of GATT in a manner that is not uniform, impartial and reasonable.
 - Article XI:1 of GATT, because China has instituted and is maintaining prohibitions or restrictions other than duties, taxes or other charges on the importation of products from the territory of the EU and on the exportation or sale for export of products destined for the territory of the EU.
 - Article XVII of GATT and Article 1.2 of China's Protocol of Accession to the WTO in conjunction with paragraphs 46 and 342 of the Working Party Report, because Chinese State Trading Enterprises have not acted in conformity with the principle of non-discriminatory treatment in their purchases or sales involving either imports from or exports to the territory of the EU.
 - Article 7 of the TFA, because for products originating from the territory of the EU China is not maintaining procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.
 - Article 10 of the TFA, because China appears not to have adopted and/or applied import, export, and transit formalities and documentation requirements with a view to a rapid release and clearance of goods, particularly perishable goods. Furthermore, China appears not to have adopted and/or applied import, export, and transit formalities and documentation requirements in a manner that aims at reducing the time and cost of compliance for traders and operators.
 - Article 2 of the SPS Agreement, because China has not ensured that the sanitary and phytosanitary measures which it applies do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of the EU and has applied sanitary and phytosanitary measures in a manner which constitutes a disguised restriction on international trade.
 - Article 8 of the SPS Agreement, because in the operation of control, inspection and approval procedures, China has not ensured that the procedures are not inconsistent with the provisions of this Agreement.
 - Paragraph 1(a) of Annex C of the SPS Agreement because China has failed to ensure, with respect to its procedures for checking and ensuring the fulfilment of sanitary measures, that such procedures have been undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products.
 - Article II:1 of GATS because China has not accorded immediately and unconditionally to services and service suppliers of the EU treatment no less favourable than that provided to like services and service suppliers of other Members.
 - Article VIII of GATS because China is not ensuring that monopoly suppliers of services in China, in the supply of the monopoly services, act in a manner consistent with China's obligations under Article II and specific commitments.

- Article XI:1 of GATS, because China has applied restrictions on international transfers and payments for current transactions relating to its specific commitments.
- Article XVI of GATS, because China has, through the modes of supply identified in Article I, accorded services and service suppliers of the EU treatment less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule, including by not allowing cross-border movement of capital that forms an essential part of the service itself, and in relation to the supply or consumption of a service through the modes of supply referred to in subparagraphs 2(b) and 2(c) of Article I for which it has undertaken market-access commitments.
- Article XVII:1 of GATS, because China has accorded in the sectors inscribed in its Schedule in respect of measures affecting the supply of services, treatment less favourable than that it accords to its own like services and service suppliers, to services and service suppliers of the EU, not consistent with any conditions and qualifications set out in its Schedule.

The measures by China appear to nullify or impair the benefits accruing to the European Union directly or indirectly under GATT, the SPS Agreement, the TFA and GATS.

In addition, these measures nullify or impair the benefits accruing to the EU, directly or indirectly, in the sense of Article XXIII:1(b) of GATT, also read in conjunction with Article 24.8 of the TFA, and Article XXIII:3 of GATS.

This consultation request relates to the measures at issue and to any amendments, supplements, extensions, replacement measures, renewal measures, implementing measures, or other related measures, including but not limited to any such measures referred to by either party during the course of the discussions referenced to in this consultation request.

The European Union reserves the right to raise additional measures and claims, including under other provisions of the covered agreements, or in relation to other parts of the European Union, regarding the above matters during the course of the consultations and in any future request for panel proceedings.
