



## CHINA - MEASURES CONCERNING TRADE IN GOODS AND SERVICES

### REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 7 December 2022, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On 27 January 2022 the European Union requested 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.

The European Union held consultations with China on 14 and 15 March 2022 with a view to reaching a mutually satisfactory settlement of the matter. Unfortunately, the consultations failed to settle the dispute.

Therefore, the European Union respectfully requests, pursuant to Articles 4 and 6 of the DSU, Article XXII:1 of GATT 1994, Article 24.8 of the TFA, and Article 11 of the SPS Agreement, that the Dispute Settlement Body establish a panel to examine this matter, based on the standard terms of reference as set out in Article 7.1 of the DSU.

#### **1. Background to the dispute**

This Request relates to a complex of inter-related measures attributable to China restricting the trade in goods from or to Lithuania or linked to Lithuania. As regards the temporal aspects, in light of the fact that the adoption and maintenance of the Chinese measures has been wholly or partly hidden or disguised, and experienced by the European Union with varying intensities at different times, the European Union seeks findings regarding the existence and content of each of the measures at issue by reference to each of the following times (1) at the end of the first quarter of 2021 (2) at the end of August 2021 (3) at the end of the final quarter of 2021 and (4) the date on which the panel is established.

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, and strongly correlated in temporal and substantive terms, as well as in terms of the provenance of the goods and have persisting effects.

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. Entities established in Lithuania, or showing a link to Lithuania, also reported the supply of services from or to Lithuania, encountered restrictions. Those restrictions have similar characteristics.

In the same time period, entities established in Lithuania began reporting that beginning in 2021, Chinese customs authorities began refusing customs clearance for shipments of various products covered by SPS certificates issued by Lithuanian authorities.<sup>1</sup> These entities also reported that these refusals appeared to lack proper justification and occurred at an increased frequency.

As of 8 February 2022, China formalised the import bans for products that had already been blocked, by suspending the acceptance of import declarations from Lithuania.<sup>2</sup>

### **The measures at issue**

The measures, including the SPS measures at issue, include the adoption, maintenance and application through its actions or omissions, in law and in fact, as such and as applied, by China, of import bans or import restrictions on the products at issue, from the EU or parts thereof.

The means through which China imposes and administers these measures operate collectively but also separately, and affect the importation or exportation of goods from or to Lithuania, or showing a link to Lithuania for example through the presence of Lithuanian components. These measures predominantly concern goods 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 the trade in goods 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, as well as the unjustified refusal to grant 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.

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 further 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.

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<sup>1</sup> Including wheat, logs (wood), peat and food and beverage products.

<sup>2</sup> Including alcohol, beef, dairy products, logs (wood) and peat.

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## 2. Brief summary of the legal basis for the complaint in respect of China's measures

The European Union considers that in light of the matters set out above in sections 1 and 2, the measure or series of measures described are inconsistent with China's obligations under the following provisions of the covered agreements<sup>3</sup>:

- Article I:1 of GATT 1994, because, by its acts or omission as regards the operation of its custom clearance procedures to goods originating in Lithuania and/or transiting through Lithuanian ports and/or with some other link to Lithuania, China has not and 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 1994, because, by its acts or omission as regards the operation of its custom clearance procedures to goods transiting through Lithuania, China has accorded and 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 1994, because China has administered and 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 1994, 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.
- Article 7 of the TFA, because for products originating from the territory of the EU, China has not maintained and 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 has not 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 has not 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 2.2 of the SPS Agreement, because China has not ensured, and does not ensure, that the measures at issue are not applied beyond the extent necessary to protect human or animal life or health. Further, China has not ensured, and does not ensure, that the measures at issue are based on scientific principles. It appears that there is no scientific basis, whether specific or general, for restricting imports from within Lithuania; or with respect to all the products at issue. China failed and fails to ensure that the measures at issue are not maintained without sufficient scientific evidence.
- Article 2.3 of the SPS Agreement, because China has not ensured and is not ensuring 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.
- Articles 3.1 and 3.2 of the SPS Agreement, because the measures are neither "based on" nor "conform to" the relevant international standards, guidelines or recommendations as laid down by the Codex Alimentarius, World Organization for Animal Health ("OIE"), or

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<sup>3</sup> With respect to all of the matters, GATT, TFA and SPS, China systematically precludes or restricts trade through an inappropriate and/or unjustified application of the relevant provisions.

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International Plant Protection Convention ("IPPC"), as provided for in Articles 3.1 and 3.2 of the SPS Agreement.

- Articles 5.1 and 5.2 of the SPS Agreement, because China does not ensure that the measures at issue are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations, as required by Article 5.1 of the SPS Agreement. China has neither provided, nor referred to, any such risk assessment or completed any risk assessment.

Further, in adopting, maintaining and/or applying the measures at issue, China did not take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; the prevalence of specific diseases or pests; the existence of pest- or disease-free areas; the relevant ecological and environmental conditions; and quarantine or other treatment. Had China properly taken these matters into account, it would have concluded that the measures at issue are unnecessary and unjustified.

- Article 5.6 of the SPS Agreement, because when establishing and maintaining the measures at issue, China has failed and fails to ensure that they are not more trade-restrictive than required to achieve their appropriate level of sanitary protection, taking into account technical and economic feasibility, as required by Article 5.6 of the SPS Agreement. China has failed and fails to take into account that there are other measures, which are reasonably available taking into account technical and economic feasibility, that achieve China's appropriate level of sanitary protection and that are significantly less restrictive to trade. In particular, as regards wheat, the alternative measures would take into account the standards for establishing pest free areas as determined by the IPPC. China should recognise Lithuanian territory as a non-affected area.
- Article 5.8 of the SPS Agreement because, when the EU requested China to provide the reasons for the sanitary or phytosanitary measures constraining exports of logs, peat and wheat, for which the EU has reason to believe that they are not based on the relevant international standards, guidelines and recommendations, China did not provide the reasons.
- Article 8 of the SPS Agreement, because in the operation of control, inspection and approval procedures, China has not ensured and is not ensuring that the procedures are not inconsistent with the provisions of this Agreement.
- Article 8 and Annex C.1(a), (b) and (c) of the SPS Agreement, because China has failed, and fails 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, as required by Annex C.1(a) to the SPS Agreement.

Furthermore, with respect to Annex C.1(b) to the SPS Agreement, China has failed, and fails to ensure, that the competent body transmits, as soon as possible, the results of the procedure in a precise and complete manner to the applicant, so that corrective action may be taken if necessary; that even when the application has deficiencies, the competent body proceeds, as far as practicable, with the procedure if the applicant so requests.

- Article III:4 of GATT 1994 for the reasons stated above, the measures at issue are inconsistent with China's obligations under GATT 1994, and specifically Article III:4 (national treatment with respect to internal regulations) because China accords to imported products treatment less favourable than that accorded to like products of national origin.

The measures by China appear to nullify or impair the benefits accruing to the European Union directly or indirectly under GATT 1994, the SPS Agreement, and the TFA.

This panel request relates to the measures at issue and to any amendments, supplements, extensions, replacement measures, renewal measures, implementing measures, or other related measures.

The European Union asks that this request for the establishment of a panel be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 20 December 2022.

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