

ANNEX G

REQUEST FOR CONSULTATIONS AND REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA

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ANNEX G-1

REQUEST FOR CONSULTATIONS BY CHINA

WORLD TRADE ORGANIZATION

WT/DS399/1
G/L/893
G/SG/D36/1
16 September 2009
(09-4361)

Original: English

UNITED STATES – MEASURES AFFECTING IMPORTS OF CERTAIN PASSENGER VEHICLE AND LIGHT TRUCK TYRES FROM CHINA

Request for Consultations by China

The following communication, dated 14 September 2009, from the delegation of China to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the United States ("US") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade* ("GATT 1994"), and Article 14 of the *Agreement on Safeguards* with regard to certain measures taken by the US affecting the import of certain passenger vehicle and light truck tires from the People's Republic of China ("China").

This request concerns the restrictions recently announced by the US on imports of certain passenger vehicle and light truck tires from China. These restrictions take the form of substantially higher tariffs over the next three years well in excess of the tariff rates permitted under US international obligations to China. These restrictions were announced on 11 September 2009 by the US authorities following an investigation pursuant to section 421 of the Trade Act of 1974, 19 U.S.C. 2451 et seq. The report by the International Trade Commission issued as part of this investigation can be found at *Certain Passenger Vehicle and Light Truck Tires from China*, Inv. No. TA-421-7, USITC Pub. No. 4085 (July 2009). The decision by the President can be found in the Proclamation issued by President Barack Obama on 11 September 2009. Under this proclamation, these measures are to take effect on 26 September 2009. This request includes both these higher tariffs that have been announced, and any other measures the US may announce to implement this decision.

China considers that these higher tariffs, not having been justified as emergency action under relevant WTO rules, are inconsistent with Article I:1 of the GATT 1994 because the US does not

accord the same treatment it grants to passenger and light truck tires originating in other countries to the like products originating in China.

Nor can the US justify these measures as properly applied exceptions to this fundamental WTO principle. These measures have not been properly justified pursuant to Article XIX of GATT 1994 and the *Agreement on Safeguards*. Nor have these measures been properly justified as China-specific restrictions under the *Protocol on the Accession of the People's Republic of China* (the Protocol of Accession). There are several problems with the US statute and the way in which the US applies its statute.

The US statute authorizing these China-specific restrictions is inconsistent on its face with Article 16 of the Protocol of Accession in that the US statute impermissibly defines "significant cause" more narrowly than required by the ordinary meaning of that phrase as used in Article 16.4 of the Protocol of Accession.

Each of these measures is also inconsistent, as applied, with US obligations under the Protocol of Accession, and the US has therefore not justified invocation of the Protocol in the following respects:

Articles 16.1 and 16.4 of the Protocol of Accession because imports from China were not "in such increased quantities" and were not "increasingly rapidly."

Articles 16.1 and 16.4 of the Protocol of Accession because imports from China were not a "significant cause" of material injury or threat of material injury.

Articles 16.1 and 16.4 of the Protocol of Accession because the domestic tire producers were not experiencing "market disruption" or "material injury," and in fact opposed the investigation and these measures, and stated that the requested relief would not change their plans.

Article 16.3 of the Protocol of Accession because the restrictions are not necessary at all, and are being imposed beyond the "extent necessary to prevent or remedy" any alleged market disruption.

Article 16.6 of the Protocol of Accession because the restrictions are being imposed for a period of time longer than "necessary to prevent or remedy" any alleged market disruption.

China reserves its right to raise further factual issues and legal claims during the course of the consultations, and in any future request for the establishment of a panel.

I look forward to receiving the reaction of your authorities to this request so that we can arrange a mutually acceptable date and location for consultations.

ANNEX G-2

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA

WORLD TRADE ORGANIZATION

WT/DS399/2
11 December 2009

(09-6454)

Original: English

UNITED STATES – MEASURES AFFECTING IMPORTS OF CERTAIN PASSENGER VEHICLE AND LIGHT TRUCK TYRES FROM CHINA

Request for the Establishment of a Panel by China

The following communication, dated 9 December 2009, from the delegation of China to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 14 September 2009, China requested consultations with the United States ("US") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade* ("GATT 1994"), and Article 14 of the *Agreement on Safeguards* with regard to certain measures taken by the US affecting the import of certain passenger vehicle and light truck tires from the People's Republic of China ("China"). This request for consultations was circulated as document WT/DS399/1 – G/L/893 – G/SG/DS36/1 dated 16 September 2009.

Consultations were held on 9 November 2009 in Geneva, pursuant to each of the above-referenced provisions and agreements, with a view toward reaching a mutually satisfactory solution. Although these consultations clarified a few issues relating to this matter, the consultations failed to settle the dispute.

Therefore, China respectfully requests pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of the GATT 1994, and Article 14 of the *Agreement on Safeguards* that the Dispute Settlement Body ("DSB") establish a Panel to examine this matter.

This request concerns the restrictions announced by the US on imports of certain passenger vehicle and light truck tires from China, and the legal basis for those restrictions. These restrictions take the form of substantially higher tariffs over the next three years well in excess of the tariff rates permitted under US international obligations to China. These restrictions were announced on 11 September 2009 as a presidential decision following an investigation pursuant to section 421 of the

Trade Act of 1974, 19 U.S.C. 2451 et seq. The report by the International Trade Commission issued as part of this investigation can be found at *Certain Passenger Vehicle and Light Truck Tires from China*, Inv. No. TA-421-7, USITC Pub. No. 4085 (July 2009). The decision by the President can be found in two documents: first, *Presidential Determination 2009-28*, which was published at 74 Fed. Reg. 47433 (16 September 2009); and second, *Proclamation 8414*, which was published at 74 Fed. Reg. 47861 (17 September 2009). Pursuant to this decision by President Obama, these measures took effect on 26 September 2009, and continue in effect today. This request includes both the higher tariffs that have been announced, and any other measures the US has announced or may announce to implement this decision.

China considers that these higher tariffs, not having been justified as emergency action under relevant WTO rules, are inconsistent with Article I:1 of the GATT 1994, because the US does not accord the same treatment it grants to passenger and light truck tires originating in other countries to the like products originating in China, and Article II of GATT 1994, since these higher tariffs consist of unjustified modifications of US concessions thereunder.

The US has not even attempted to justify these restrictions as a general safeguard action pursuant to Article XIX of GATT 1994 and the *Agreement on Safeguards*. The only justification offered was that these measures have been imposed under the *Protocol on the Accession of the People's Republic of China* (the "Protocol of Accession"). China believes these restrictions, and the basis under US law for imposing these restrictions, are inconsistent with US obligations under the Protocol of Accession, in particular:

- (a) The US statute authorizing these restrictions, 19 U.S.C. 2451, is inconsistent on its face with Article 16 of the Protocol of Accession in that the US statute impermissibly weakens the standard of "significant cause" by imposing a definition of the term that contradicts Article 16.4 of the Protocol of Accession.
- (b) The restrictions imposed pursuant to 19 U.S.C. 2451 in this particular case are inconsistent with the following provisions of the Protocol of Accession:
 - (i) Articles 16.1 and 16.4, because imports from China in this case were not "in such increased quantities" and were not "increasing rapidly," and instead had begun to decline in response to changing US demand conditions.
 - (ii) Articles 16.1 and 16.4, because imports from China in this case were not a "significant cause" of material injury or threat of material injury, and are being improperly blamed by the US for the condition of the industry that, in fact, reflected other factors in the market.
 - (iii) Article 16.3, because the restrictions in this case are not necessary, and are being imposed beyond the "extent necessary to prevent or remedy" any alleged market disruption, and should not have been set at the high tariff levels being imposed.
 - (iv) Article 16.6, because the restrictions in this case are being imposed for a period of time longer than "necessary to prevent or remedy" any alleged market disruption, and need not have been imposed for three years.

China requests that the Panel be established with the standard terms of reference, in accordance with Article 7.1 of the DSU.

China asks that this request for the establishment of a panel be placed on the agenda for the next meeting of the DSB, which is scheduled to take place on 21 December 2009.
