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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY AUSTRALIA

The following communication, dated 16 September 2021, from the delegation of Australia to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

1. On 22 June 2021, Australia requested consultations with 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* with respect to anti-dumping and countervailing duty measures on bottled wine in containers of 2 litres or less imported from Australia.¹

2. Australia and China held such consultations on 9 August 2021. Unfortunately, these consultations were unsuccessful in resolving this dispute. As a consequence, Australia is requesting 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.

3. Without prejudice to Australia's right to take any appropriate future actions, and taking into consideration China's decision not to impose definitive countervailing duties on bottled wine from Australia at this time, Australia is not including in this request matters related to China's measures imposing provisional countervailing duties on bottled wine from Australia and determining (i) the existence and amount of countervailable subsidies on bottled wine from Australia and (ii) injury caused to the domestic industry in China by imports of allegedly subsidized bottled wine from Australia, including all investigations, determinations, decisions, and actions in relation to those measures.

4. Australia considers that China's measures imposing definitive anti-dumping duties on bottled wine from Australia, as set forth in Ministry of Commerce of the People's Republic of China ("MOFCOM") Notice No. 6 of 2021 (26 March 2021) including any and all annexes and any amendments, modifications or replacements thereof, including the initiation and conduct of the investigation, determinations made, decisions taken, and actions related to those measures, are inconsistent with China's commitments and obligations, including under the following provisions of the GATT 1994 and the Anti-Dumping Agreement.

Interpretation and application of "domestic industry"

- i. Article 4.1 of the Anti-Dumping Agreement because, *inter alia*, China erred in its interpretation and application of the definition of "domestic industry" by, *inter alia*, failing to establish the quantitative and qualitative elements of a major proportion of the total domestic production of the like products.

¹ WT/DS602/1.

Initiation of the investigation

- ii. Articles 5.1, 5.2(i), and 5.4 of the Anti-Dumping Agreement because, *inter alia*, China improperly initiated an anti-dumping investigation on the basis of an application that was 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", and because, *inter alia*, China failed to properly determine the domestic production volume of the like products.
- iii. Articles 5.2, 5.2(iii), 5.2(iv), 5.3 and 5.8 of the Anti-Dumping Agreement because, *inter alia*, China initiated an investigation on the basis of an application 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.

Conduct of the investigation

- iv. Articles 6.1, 6.1.1, 6.1.2, 6.1.3 and 6.2 of the Anti-Dumping Agreement because, *inter alia*, China did not provide all interested parties ample opportunity to present all relevant information and evidence and failed to provide all interested parties a full opportunity for the defence of their interests, including, *inter alia*, because it did not give due consideration to requests for extensions for which cause had been shown and for which granting the extension would be practicable and did not grant those extensions; because, *inter alia*, where it formed the view that there were deficiencies in the information provided, it did not make the interested parties aware of those alleged deficiencies and give them ample opportunity to rectify such alleged deficiencies; and because, *inter alia*, China did not properly make evidence placed on the record by the applicant and other interested parties available promptly to the Australian Government and other interested parties, and failed to properly provide the full text of the written application to the Australian Government.
- v. Article 6.4 of the Anti-Dumping Agreement because, *inter alia*, China failed to provide timely opportunities for all interested parties to see all non-confidential information that was relevant to the presentation of their cases, and to prepare presentations on the basis of this information, notwithstanding that it was practicable to do so, including *inter alia* with respect to: alleged deficiencies in the information provided by the interested parties and the basis for disregarding such information; the calculation of the output of the domestic industry; the determination of normal value and export price; the adjustments to ensure a fair comparison between normal value and export price; differences in price comparability; the calculations of the dumping margins; and the determination of injury and causation.
- vi. Articles 6.4, 6.5 and 6.5.1 of the Anti-Dumping 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 that provided sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, and, *inter alia*, in some instances China failed to provide or require the applicant and interested parties to provide any non-confidential summary of allegedly confidential information without any indication that there were exceptional circumstances and without providing a statement of reasons as to why summarization was not possible.
- vii. Articles 6.6 of the Anti-Dumping 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 wine, the accuracy of the statistics of various economic indicators related to the state of China's wine industry and the industry data submitted by Chinese domestic companies.

- viii. Article 6.9 of the Anti-Dumping Agreement because, *inter alia*, China failed to disclose to the interested parties, before the final determinations were made, the essential facts under consideration which formed the basis for the determinations, and because it failed to do so in sufficient time for the parties to defend their interests. In this regard, China failed to make available all relevant information on the matters of fact, law and reasons that led to the imposition of final duties and failed to disclose to the interested parties, *inter alia*: the alleged deficiencies in the information provided by the interested parties and the basis for disregarding such information; the alternative facts selected on the basis of "facts available" and the basis for those selections; the calculation of the output of the domestic industry; the calculations of the export prices; the determination of normal value and export price; decisions concerning adjustments to ensure a fair comparison of normal value and export price; sufficient details of the calculations of the dumping margins; and the determination of injury and causation.

The use of facts available

- ix. Article 6.8 and paragraphs 1, 3, 5, 6, and 7 of Annex II of the Anti-Dumping Agreement because, *inter alia*, China improperly based its determinations on the facts available. In particular, China was not entitled to reject necessary information submitted by interested parties as such information was submitted in a reasonable period of time and the interested parties did not significantly impede the investigation. Further, China also, *inter alia*:
- 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 adequate justification, disregarded information provided by interested parties acting to the best of their abilities;
 - c. failed to inform supplying parties forthwith of the reasons for not accepting evidence or information and failed to provide an opportunity to provide further explanations within a reasonable period;
 - d. failed to give adequate reasons for the rejection of such information in its published determinations; and
 - e. failed to exercise special circumspection in making its findings.
- x. Article 6.13 of the Anti-Dumping 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, including, *inter alia*, in its assessments, for the purposes of Article 6.8 and paragraphs 1, 3, 5, 6, and 7 of Annex II of the Anti-Dumping Agreement, of whether the interested parties had not provided necessary information within a reasonable period or had significantly impeded the investigation.

Dumping determination

- xi. Article 2.1 of the Anti-Dumping Agreement because China failed to determine the existence of dumping as defined in Article 2.1.
- xii. Articles 2.2, 2.2.1, 2.2.1.1 and 2.2.2 of the Anti-Dumping Agreement because, *inter alia*, China (i) improperly and without proper justification disregarded sales of the like product in the Australian domestic market in determining normal value, without establishing that either there were no sales of the like product in the ordinary course of trade in the Australian domestic market, or that, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales did not permit a proper comparison; and because China failed to

- give reasons and adequate explanations of its methodology and calculations for determining normal value; (ii) failed to base its calculation of costs on the records kept by the exporter or producer under investigation (in whole or in part); and (iii) failed to base the amounts for administrative, selling and general costs and for profits on actual data or any other reasonable basis (in whole or in part).
- xiii. Article 2.3 of the Anti-Dumping Agreement, because, *inter alia*, China failed to determine export price on a reasonable basis, and because it failed to give reasons and adequate explanations of its methodology and calculations relied upon to calculate export price.
- xiv. 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, *inter alia*, by failing to adjust for factors affecting price comparability, failing to indicate what information was necessary to make a fair comparison, in part because of its failure to disclose its methodology and calculations for determining both export price and normal value, and imposing an unreasonable burden of proof on the interested parties.
- xv. 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 a weighted average normal value with a weighted average of prices of all comparable export transactions.
- xvi. Articles 6.10 of the Anti-Dumping Agreement because, *inter alia*, China relied upon the use of samples that were neither statistically valid on the basis of the information available to the authorities at the time of the selection nor the largest percentage of the volume of exports from Australia that could reasonably be investigated.

Determination of injury and causation

- xvii. Article 3.1 of the Anti-Dumping Agreement because, *inter alia*, China failed to base its determination of injury on positive evidence and an objective examination of: (a) the volume of the allegedly dumped imports of bottled wine from Australia and the effect of these imports on prices in the domestic market for like products; and (b) the consequent impact of the allegedly dumped imports of bottled wine from Australia on domestic producers of like products. China's failure to meet the obligations under Article 3.1 is linked to its failure to comply with Articles 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement.
- xviii. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because, *inter alia*, China's consideration of whether there was a significant increase in the allegedly dumped imports under investigation did not involve an objective analysis based on positive evidence due, *inter alia*, to errors it made in the analysis of volume relative to consumption and in calculation of the market share of Australian and non-subject imports.
- xix. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because China's consideration of the effect of the subject imports on the prices of like products in the domestic market: (a) did not involve an objective analysis based on positive evidence; (b) did not consider whether there had been significant price undercutting or price depression; and (c) did not properly consider whether the effect of subject imports was to prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, China has, *inter alia*: (i) failed to give reasons and adequate explanations of the methodology used for calculating prices for subject imports, non-subject imports and domestic like products; (ii) failed to consider all the positive evidence available on the record relating to price undercutting and price depression; (iii) failed to conduct a counterfactual analysis in the context of making a price suppression finding; and (iv) compared volumes and prices of subject imports to domestic like product that are not comparable and failed to ensure price comparability in its analysis of price effects.
- xx. Articles 3.1 and 3.4 of the Anti-Dumping Agreement because China's examination of the impact of the dumped imports on the domestic industry did not include all relevant

economic factors and indices having a bearing on the state of the domestic industry, and: (a) was not an objective analysis based on positive evidence; (b) did not properly evaluate the impact of the subject imports on the domestic industry; and (c) was conducted in relation to a domestic industry that was wrongly defined under Article 4.1 of the Anti-Dumping Agreement.

- xxi. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because China failed to: (a) demonstrate that the allegedly dumped imports of bottled wine from Australia, through the effects of the alleged dumping, caused injury to the domestic industry; (b) base its purported demonstration of the causal relationship on an objective examination of all relevant evidence on the record; (c) objectively examine other known factors that injured the domestic industry, including, *inter alia*, non-subject imports from other countries, contraction in demand or changes in the patterns of consumption, tariff reductions for subject imports of bottled wine from Australia during the injury period of investigation; and (d) not attribute the injuries caused by those other factors to the imports of bottled wine from Australia. Moreover, China improperly based its assessment of causation on flawed considerations, examinations, and evaluations under Articles 3.2 and 3.4 of the Anti-Dumping Agreement, including, *inter alia*, a flawed determination of price suppression.

Imposition of duties

- xxii. Article VI:2 of GATT 1994 and Article 9.1, 9.2, 9.3 and 9.4 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; and has imposed anti-dumping duties in excess of the margin of dumping that should have been established under Article 2 of the Anti-Dumping Agreement.

Transparency

- xxiii. Articles 12.1 and 12.1.1(iii) and (iv) of the Anti-Dumping Agreement because, *inter alia*, China failed to provide in its public notice of the initiation of the investigation, or in a separate report, adequate information on the basis on which dumping is alleged in the application and a summary of factors on which the allegation of injury is based.
- xxiv. Articles 12.2 and 12.2.2 of the Anti-Dumping 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, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures, and the reasons for acceptance or rejection of relevant arguments and claims, including, *inter alia* the: facts selected and relied upon on the basis of "facts available" and the basis for those selections; calculation of the output of domestic industry; the determination of normal value and export price; adjustments made, if any, to undertake a fair comparison; calculation of the dumping margins and the reasons for the calculation methodology used; imposition of dumping duties; and the determination of injury and causation.

Consequential claims

- xxv. Article VI of the GATT 1994 as a consequence of the breaches of the Anti-Dumping Agreement described above.
- xxvi. Article 1 and 18.1 of the Anti-Dumping Agreement as a consequence of the breaches of the Anti-Dumping Agreement described above.

5. China's measures also appear to nullify or impair the benefits accruing to Australia directly or indirectly under the cited agreements.

6. Therefore, Australia respectfully requests, 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, that the Dispute

Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

7. Australia asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 27 September 2021.
