



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

**REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA**

The following communication, dated 13 January 2022, from the delegation of China to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On 24 June 2021 the Government of the People's Republic of China ("China") requested consultations with the Government of Australia ("Australia") pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 17 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 Australia's measures imposing anti-dumping measures on imports of wind towers, deep drawn stainless steel sinks (stainless steel sinks) and certain railway wheels (railway wheels), and countervailing measures on imports of stainless steel sinks, in each case as exported from China to Australia.

China held consultations with Australia on 11 August 2021. These consultations failed to resolve the dispute.

As a result, in order to resolve the dispute, China respectfully requests, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of the GATT 1994, Article 17.4 of the Anti-Dumping Agreement and Article 30 of the SCM Agreement, that the Dispute Settlement Body (DSB) establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

**A Measures at issue**

The measures at issue are explained and identified below.

**1 With respect to wind towers**

By way of notices dated 14 April 2014, the Parliamentary Secretary to the Minister for Industry of Australia imposed final anti-dumping duties in respect of wind towers imported into Australia from China. The imposition of the duties was based on the findings and recommendations reported to the Parliamentary Secretary in *Anti-Dumping Commission Report No. 221 - Dumping of Wind Towers Exported from the People's Republic of China and the Republic of Korea (21 March 2014)*.

The specific legal instruments that imposed those duties, and other legal instruments that were subsequently published with respect to those instruments, are set out in the Appendix. The measures at issue include those specific legal instruments and all annexes, amendments, modifications, replacements, implementing acts or related measures in connection with those legal instruments.

## **2 With respect to stainless steel sinks**

By way of notices dated 19 March 2015, the Parliamentary Secretary to the Minister for Industry and Science of Australia imposed final anti-dumping and countervailing duties in respect of stainless steel sinks imported into Australia from China. The imposition of the duties was based on the findings and recommendations reported to the Parliamentary Secretary in *Anti-Dumping Commission Report No. 238 - Alleged Dumping of Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China and Alleged Subsidisation of Deep Drawn Stainless Steel Sinks (19 February 2015)*.

The specific legal instruments that imposed those duties, and other legal instruments that were subsequently published with respect to those instruments, are set out in the Appendix. The measures at issue include those specific legal instruments and all annexes, amendments, modifications, replacements, implementing acts or related measures in connection with those legal instruments.

## **3 With respect to railway wheels**

By way of notices dated 12 July 2019, the Minister for Industry, Science and Technology of Australia imposed final anti-dumping duties in respect of railway wheels imported into Australia from China. The imposition of the duties was based on the findings and recommendations reported to the Minister in *Anti-Dumping Commission Report No. 466 - Alleged Dumping of Certain Railway Wheels Exported from the People's Republic of China and France (1 March 2019)*.

The specific legal instruments that imposed those duties are set out in the Appendix. The measures at issue include those legal instruments and all annexes, amendments, modifications, replacements, implementing acts or related measures in connection with those legal instruments.

## **B Legal basis**

### **1 Anti-dumping measures**

The legal claims with respect to the anti-dumping measures relate to each of the measures concerning wind towers, stainless steel sinks and railway wheels, unless otherwise stated.

China considers that the anti-dumping measures at issue are inconsistent with Australia's obligations under the relevant Articles of the covered agreements as set out below.

1. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because in the determination of the margin of dumping Australia did not use the cost of production of the products concerned in China, nor base the cost of production of the products concerned on the cost of production in China, when China was the country of origin of the products. For example:

- a. in the case of wind towers, the cost for plate steel and flanges was a non-China cost calculated by reference to information from a previous investigation concerning hot rolled plate steel, and in a related later measure the non-China cost was adjusted by an index based on movements in the Steel Bulletin Board (Platts) benchmark from the original investigation period;
- b. in the case of stainless steel sinks, the cost for 304 stainless steel cold rolled coil was calculated by reference to MEPS (International) Ltd-based average price using monthly reported MEPS North American and European prices (excluding the Asian price), and in a related later measure by reference to an average price of grade 304 stainless steel cold rolled coil for North America and Europe published by Steel Business Briefing Ltd;
- c. in the case of railway wheels, the cost for steel billet was calculated by reference to a steel billet price paid by a French producer of railway wheels adjusted for selling, general and administrative expenses of a third-party company.

2. Articles 2.1, 2.2, 2.2.1 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because in the determination of domestic sales in the ordinary course of trade for the determination of the margin of dumping in the case of stainless steel sinks Australia did not use the

cost of production of the products concerned in China, being the country of origin of the products. Instead, the cost for 304 stainless steel cold rolled coil was calculated by reference to MEPS (International) Ltd-based average price using monthly reported MEPS North American and European prices (excluding the Asian price), and in a related later measure by reference to an average price of grade 304 stainless steel cold rolled coil for North America and Europe published by Steel Business Briefing Ltd.

3. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because in the determination of normal value Australia:

- a. failed to determine whether the records kept by the exporters reasonably reflected the costs of production associated with the production of the products concerned before determining not to calculate the exporters' costs on the basis of their records;
- b. wrongly determined that the costs of the exporters should not be calculated on the basis of their records, where those records were kept in accordance with the generally accepted accounting principles of China and reasonably reflected the costs of production associated with the production of the products concerned.

4. Articles 2.1, 2.2, 2.2.1 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994 because, in the case of stainless steel sinks, in treating the exporters' sales of like products in the domestic market as not being in the ordinary course of trade Australia:

- a. failed to determine whether the records kept by the exporters reasonably reflected the costs of production associated with the production of the products concerned before determining not to calculate the exporters' costs on the basis of their records;
- b. wrongly determined that the costs of the exporters should not be calculated on the basis of their records, where those records were kept in accordance with the generally accepted accounting principles of China and reasonably reflected the costs of production associated with the production of the products concerned.

5. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because Australia did not properly determine:

- a. whether the exporters' costs should be calculated on the basis of their records; and
- b. the exporters' costs of production,

when:

- c. in the case of the determinations relating to wind towers, Australia considered and used a plate steel input cost difference to ascribe a higher cost of that input to the exporter, where the cost difference was not a cost difference in the country of origin and was not based on the records kept by the exporter;
- d. in the case of the determination relating to railway wheels, Australia considered and used a cost of an input, being a purchase cost of steel billet, where the exporter did not have such a cost in its financial records because steel billet was self-made by the exporter from raw materials including iron ore and coking coal.

6. Article 2.4 of the Anti-Dumping Agreement, because Australia:

- a. used an item of cost in the calculation of the normal value for exporters under investigation that was different to the cost of production in either and both the country of origin and their records but then failed to make, or in the alternative failed to consider the requirement to make, a due allowance to ensure a fair comparison between the export price and the normal value for the effect of that cost difference on price comparability;
- b. in the case of stainless steel sinks:

- i. made a due allowance for taxation to an extent that did not exist;
- ii. for one exporter, in one instance, made a due allowance for accessories that included an amount for the exporter's profit on its domestic sales of the stainless steel sinks concerned where the accessories were produced by the exporter, but did not include an amount for the exporter's profit on its domestic sales of the stainless steel sinks concerned where the accessories were purchased by the exporter; and, in another instance, failed to make a due allowance based on the actual costs of accessories of the specific products as reported by the exporter;
- iii. for another exporter, made a due allowance for accessories where the amount of the due allowance was determined by comparing the cost of two export models, instead of by comparing the cost of the export model and its comparable domestic model.

7. Articles 2.1, 2.2 and 2.2.2 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because:

- a. in the cases of wind towers and stainless steel sinks, Australia failed to determine the amount for profits based on actual data pertaining to production and sales of the product concerned in the ordinary course of trade by the exporters under investigation;
- b. in the case of railway wheels, Australia failed to determine the amount for profits on the basis of the actual amounts incurred and realized by the exporter under investigation in respect of production and sales in the domestic market of the country of origin of the same general category of products;
- c. in the case of wind towers, Australia considered the products that were destined for consumption in the exporting country to be like products for the purposes of calculating the amount for profits, but not to be like products for the purposes of considering whether there were sales of like products in the domestic market. In so doing, Australia either:
  - i. improperly determined that the exporter's normal value could not be determined under Article 2.1 due to a lack of domestic sales of like products; or
  - ii. improperly determined the amount for profit on the basis that there were no domestic sales of like goods for normal value purposes under Article 2.2 and 2.2.2.

8. Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994, because the amount of the anti-dumping duties imposed by Australia exceeds any margins of dumping that may have been properly established under Article 2 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994.

## 2 Countervailing measures

The legal claims with respect to the countervailing measures relate to the measures concerning stainless steel sinks, and only with regard to the alleged *Program 1 - Raw Materials Provided by the Government at Less than Fair Market Value* ("the alleged program").

China considers that the countervailing measures at issue are inconsistent with Australia's obligations under the relevant Articles of the covered agreements as set out below.

1. Article 1.1(a)(1) of the SCM Agreement, because Australia incorrectly determined that a certain State-invested enterprise (SIE) was a "public body" within the meaning of that Article, based on an erroneous interpretation of this term and/or in the absence of any evidence or any sufficient evidence that the enterprise possessed, exercised or was vested with governmental authority.

2. Article 1.1(b) of the SCM Agreement, because Australia failed to determine, or improperly determined, that the alleged provision of goods conferred a "benefit" to the recipient, in circumstances where the recipient was not or was not shown to be placed in a more advantageous position than it would have been in the absence of the alleged financial contribution.

3 Article 14(d) of the SCM Agreement, because Australia wrongly determined that the alleged provision of cold rolled stainless steel coil was made for less than adequate remuneration and failed to determine the adequacy of remuneration for the cold rolled stainless steel coil in relation to prevailing market conditions in the country of alleged provision.

4. Articles 1.2 and 2.1(c) of the SCM Agreement, because Australia failed to make a proper determination that the alleged provision of goods for less than adequate remuneration was specific to an enterprise or industry or group of enterprises or industries and did not clearly substantiate its determination on the basis of positive evidence. This includes, *inter alia*, Australia's:

- a. failure to properly consider the existence or duration of a "subsidy programme", predominant use by certain enterprises, whether disproportionately large amounts of the alleged subsidy were granted to certain enterprises, and the manner in which the alleged subsidy was granted; and
- b. failure to account for the diversification of economic activities.

5. Articles 11.1, 11.2, and 11.3 of the SCM Agreement, because Australia initiated the countervailing investigation without sufficient evidence of the existence of the alleged program with regard to the existence, amount and the nature of the subsidy in question, and without proper review of the accuracy and adequacy of the evidence provided in the application.

### **C Request**

By imposing the anti-dumping and countervailing duties, Australia appears to have failed to carry out and comply with its obligations under the agreements to which reference has been made. The measures at issue appear to nullify or impair benefits accruing to China directly or indirectly under those agreements.

China asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 25 January 2022.

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## APPENDIX

### A.1 Wind towers

The specific legal instruments that imposed the anti-dumping duties with respect to wind towers, and other legal instruments that were subsequently published with respect to those instruments, are set out below. The measures at issue include those specific legal instruments and all annexes, amendments, modifications, replacements, implementing acts or related measures in connection with those legal instruments.

No.	Procedure	Legal instrument	Date of instrument	Date of Publication
1.	Investigating authority report concerning anti-dumping duty final determination	<i>Customs Act 1901</i> – Part XVB – Report Number 221 – Dumping of Wind Towers Exported from the People's Republic of China and the Republic of Korea	21 March 2014	16 April 2014
2.	Anti-dumping duty final determination	<i>Customs Act 1901</i> – Part XVB – Wind Towers Exported from the People's Republic of China and the Republic of Korea – Findings in relation to a Dumping Investigation – Public notice under subsections 269TG(1) and (2) of the <i>Customs Act 1901</i>	14 April 2014	16 April 2014
3.	Anti-dumping duty final determination	<i>Customs Tariff (Anti-Dumping) Act 1975</i> – Wind Towers Exported from the People's Republic of China and the Republic of Korea – Notice under subsection 8(5) of the <i>Customs Tariff (Anti-Dumping) Act 1975</i>	14 April 2014	16 April 2014
4.	Investigating authority report concerning expiry review of anti-dumping duty	<i>Customs Act 1901</i> – Part XVB – Report No. 487 – Inquiry into the Continuation of Anti-Dumping Measures Applying to Wind Towers Exported to Australia from the People's Republic of China and the Republic of Korea	12 March 2019	27 March 2019
5.	Expiry review of anti-dumping duty determination	Anti-Dumping Notice No. 2019/33 – <i>Customs Act 1901</i> – Part XVB – Wind Towers Exported from the People's Republic of China and the Republic of Korea – Findings of the Continuation Inquiry into Anti-Dumping Measures – Notice under subsection 269ZHG(1) of the <i>Customs Act 1901</i>	25 March 2019	27 March 2019
6.	Administrative review body report concerning expiry review of anti-dumping duty determination	ADRP Report No. 100 – Wind Towers Exported from the People's Republic of China and the Republic of Korea	6 April 2020	9 July 2020
7.	Administrative review of expiry review of anti-dumping duty determination	<i>Customs Act 1901</i> – Notice under section 269ZZM(4) – Wind Towers Exported from the People's Republic of China and the Republic of Korea	8 July 2020	9 July 2020

## A.2 Stainless steel sinks

The specific legal instruments that imposed the duties with respect to stainless steel sinks, and other legal instruments that were subsequently published with respect to those instruments, are set out below. The measures at issue include those specific legal instruments and all annexes, amendments, modifications, replacements, implementing acts or related measures in connection with those legal instruments.

No.	Procedure	Legal instrument	Date of instrument	Date of publication
8.	Investigating authority report concerning anti-dumping duty and countervailing duty final determination	<i>Customs Act 1901</i> - Part XVB - Report No. 238 - Alleged Dumping of Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China and Alleged Subsidisation of Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China	19 February 2015	26 March 2015
9.	Anti-dumping duty and countervailing duty final determination	Anti-Dumping Notice No. 2015/41 – Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China - Findings in Relation to a Dumping and Subsidisation Investigation - <i>Customs Act 1901</i> – Part XVB	26 March 2015	26 March 2015
10.	Anti-dumping duty final determination	<i>Customs Tariff (Anti-Dumping) Act 1975</i> – Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China – Notice pursuant to subsection 8(5) and 8(5BA) of the <i>Customs Tariff (Anti-Dumping) Act 1975</i>	19 March 2015	26 March 2015
11.	Countervailing duty final determination	<i>Customs Tariff (Anti-Dumping) Act 1975</i> – Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China – Notice pursuant to subsection 10(3B) and 10(3D) of the <i>Customs Tariff (Anti-Dumping) Act 1975</i>	19 March 2015	26 March 2015
12.	Investigating authority report concerning anti-dumping duty review determination	<i>Customs Act 1901</i> - Part XVB - Report No. 352 - Review of Anti-Dumping Measures Applying to Deep Drawn Stainless Steel Sinks Exported to Australia from the People's Republic of China by Shengzhou Chunyi Electrical Appliances Co. Ltd.	October 2016	21 November 2016
13.	Anti-dumping duty review determination	Anti-Dumping Notice No. 2016/107 – <i>Customs Act 1901</i> – Part XVB – Certain Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China by Shengzhou Chunyi Electrical Appliances Co. Ltd - Findings in Relation to a Review of Anti-Dumping Measures – Notice under subsection 269ZDB(1)(a)(iii) of the <i>Customs Act 1901</i> and subsections 8(5BA) and 10(3D) of the <i>Customs Tariff (Anti-Dumping) Act 1975</i>	17 November 2016	21 November 2016

No.	Procedure	Legal instrument	Date of instrument	Date of publication
14.	Administrative review body report concerning anti-dumping duty review determination	ADRP Report No. 49 - Certain Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China	27 February 2017	6 April 2017
15.	Administrative review of anti-dumping duty review determination	<i>Customs Act 1901</i> – Notice under section 269ZZM(4) – Certain Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China	31 March 2017	6 April 2017
16.	Investigating authority report concerning anti-dumping duty review determination	<i>Customs Act 1901</i> - Part XVB - Report No. 459 - Review of Anti-Dumping Measures Applying to Deep Drawn Stainless Steel Sinks Exported to Australia from the People's Republic of China by Shengzhou Chunyi Electrical Appliances Co. Ltd.	April 2018	15 June 2018
17.	Anti-dumping duty review determination	Anti-Dumping Notice No. 2018/75 – <i>Customs Act 1901</i> – Part XVB – Certain Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China by Shengzhou Chunyi Electrical Appliances Co. Ltd – Findings in Relation to a Review of Anti-Dumping Measures – Notice under subsection 269ZDB(1)(a)(iii) of the <i>Customs Act 1901</i>	14 June 2018	15 June 2018
18.	Investigating authority report concerning anti-dumping duty review determination	<i>Customs Act 1901</i> - Part XVB - Report No. 461 - Review of Anti-Dumping Measures Applying to Deep Drawn Stainless Steel Sinks Exported to Australia from the People's Republic of China by Guangdong Yingao Kitchen Utensils Co. Ltd.	September 2018	12 October 2018
19.	Anti-dumping duty review determination	Anti-Dumping Notice No. 2018/143 – <i>Customs Act 1901</i> – Part XVB – Certain Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China by Guangdong Yingao Kitchen Utensils Co. Ltd – Findings in Relation to a Review of Anti-Dumping Measures – Notice under subsection 269ZCD(1)(a)(iii) of the <i>Customs Act 1901</i> and subsections 8(5), 10(3B) and 10(3D) of the <i>Customs Tariff (Anti-Dumping) Act 1975</i>	9 October 2018	12 October 2018
20.	Investigating authority report concerning expiry review of anti-dumping duty and countervailing duty	<i>Customs Act 1901</i> - Part XVB - Report No. 517 - Inquiry Concerning the Continuation of Anti-Dumping Measures Applying to Deep Drawn Stainless Steel Sinks Exported to Australia from the People's Republic of China	February 2020	28 February 2020



No.	Procedure	Legal instrument	Date of instrument	Date of publication
21.	Expiry review of anti-dumping duty and countervailing duty determination	Anti-Dumping Notice No. 2020/003 – <i>Customs Act 1901</i> – Part XVB – Deep Drawn Stainless Steel Sinks Exported to Australia from the People's Republic of China – Findings of the Continuation Inquiry No. 517 into Anti-Dumping Measures - Public Notice under section 269ZHG(1) of the <i>Customs Act 1901</i> and sections 8(5), 8(5BA), 10(3B), and 10(3D) of the <i>Customs Tariff (Anti-Dumping) Act 1975</i>	27 February 2020	28 February 2020
22.	Administrative review body report concerning expiry review of anti-dumping duty and countervailing duty	ADRP Report No. 124 - Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China	5 June 2020	8 July 2020
23.	Administrative review of expiry review of anti-dumping duty and countervailing duty determination	<i>Customs Act 1901</i> – Notice under section 269ZZM(4) – Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China	3 July 2020	8 July 2020

### A.3 Railway wheels

The specific legal instruments that imposed the duties with respect to railway wheels are set out below. The measures at issue include those specific legal instruments and all annexes, amendments, modifications, replacements, implementing acts or related measures in connection with those legal instruments.

No.	Procedure	Legal instrument	Date of instrument	Date of Publication
24.	Investigating authority report concerning anti-dumping duty final determination	<i>Customs Act 1901</i> - Part XVB - Report No. 466 - Alleged Dumping of Certain Railway Wheels Exported from the People's Republic of China and France	1 March 2019	16 July 2019
25.	Anti-dumping duty final determination	<i>Customs Act 1901</i> – Part XVB – Certain Railway Wheels Exported from the People's Republic of China and France – Findings in relation to a dumping investigation (Investigation No. 466) – Public notice under subsections 269TG(1) and (2) of the <i>Customs Act 1901</i> – Anti-Dumping Notice (ADN) 2019/30	12 July 2019	16 July 2019
26.	Anti-dumping duty final determination	<i>Customs Tariff (Anti-Dumping) Act 1975</i> – Certain Railway Wheels Exported from the People's Republic of China and France – Notice pursuant to subsection 8(5) of the <i>Customs Tariff (Anti-Dumping) Act 1975</i>	12 July 2019	16 July 2019