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Main Points of China on

Complaint for Initiation of AD/CVD Investigation

Against Aluminum Wheels Exported from China

The Government of China ("GOC") has been provided with a copy of Application for Anti-Dumping and Countervailing Duties Aluminium Road Wheels exported from the People's Republic of China dated 23 September 2011 ("the Application"). Under Article 5.5 of the Anti-Dumping Agreement, and Article 13.1 of the SCM Agreement, the GOC has the right to be notified and consult in these matters before any initiation of an investigation takes place.

Before going to detailed discussions, GOC would like to make some general remarks. Firstly, in recent years, China and Australia's economic and trade relations has developed at a very fast speed. However, the frequently used antidumping and countervailing investigations would not be very conducive to the generally very good pictures. China and Australia are both important countries in the Asian-Pacific region with high economic comparability and vast common interests. At present, our bilateral economic and trade relations are developing with very good momentum and at two sides we are very important trading and investment partners. According to the Chinese statistics, in 2010, our bilateral trade values reached 88.09 billion US dollars, up by 46.5% year on year. Our bilateral trade has already surpassed the pre-crisis level and China is the largest trading partner, export market and source of input for Australia. Aside from the intensive exchanges between the central governments of two sides, the local levels of two countries, for example, the municipality and provincial level interaction in the economic and trade factors has also been intensified with more and more interactions among the business circles, and the growing number of economic and trade mechanisms. For very long time, we have cherished this good economic and trade relation with Australia and we are willing to continuously strengthen and intensify our bilateral interactions, and reach a common development with Australia. For these purposes, the two sides have convened a high-level dialogue on trade-remedy measures this August. In that dialogue, two sides have reached consensus over various issues. For example, we agreed to address our trade differences through dialogue and consultation.

However, to the regret of Chinese side, recently, Australia side has frequently used antidumping and countervailing investigation against Chinese products. For example, Australia has initiated an antidumping and countervailing investigation against Chinese HSS on Sep. 19th. Antidumping duties have been levied on Chinese float

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glass on October 17th. Also, the Australia side initiated an antidumping investigation against Chinese made electronic cable, in September. Now, we are having this consultation prior to the initiation of countervailing investigation against Chinese ARW product. The GOC side believes that such frequently used antidumping and countervailing investigation as well as their measures, not only hurt the real interest of all parties including importers and exporters, but also is not conductive to a stable bilateral trade environment. Therefore, it is not very good for our bilateral economic and trade relations as a whole, which is not the Chinese side wants to see. The Chinese side is willing to work with Australia side to properly address trade frictions by taking care of each other's concerns, striving for mutual benefit win-win rather than easily resorting to the trade remedy measures. As for this specific petition by Australian domestic industry against Chinese ARW product, the Chinese side hopes that the Australian investigation authority can have a very careful and strict study and examination over the petition according to Australian domestic laws as well as WTO rules.

In general, the Chinese side is worried and apprehensive that there are so many cases in such short period of time. The large numbers of cases recently actually are burdens and pressures on both sides. On the part of our side, the GOC would like to see a proper address of all these measures and investigations. The Chinese side is quite open, and is willing to discuss with the Australia side at any appropriate time.

I. The petitioner did not provide accurate or adequate evidences, either in regard to AD or CVD complaints.

According to the stipulations of Art5.3 of ADA and Art.11.3 of SCM, as well as Australian AD and CVD laws, the investigating authority should investigate or examine the adequacy and accuracy of the evidences provided by the petitions so as to confirm whether there are sufficient evidences to justify a properly initiated case. The petition, however, in this case obviously cannot meet such requirements and I would like to elaborate that in three aspects.

First, the petitioner found lots of findings in the Canadian, US or EU cases to support their own allegations. However, the GOC would like to point out that all these countries have used art.15 of China WTO Protocol against Chinese products and Chinese exporters in these investigations. The results of such investigations actually reflect their bias against China and Chinese exporters and the over protectionism of their domestic industry. Since the Australian government has already acknowledged China as a full market economy. The legal basis, rules and real practices in this AD and CVD investigation against China are very different from the practice taken by the U.S. and EU. Therefore, the practice adopted by the other WTO members cannot serve as valid evidence in this case.

Secondly, the petitioner listed out quite a number of subsidy programs but failed to

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provide a full-flashed argument or substantiate the allegation by sufficient evidence; therefore, that cannot meet the WTO requirements for initiation of CVD. For instance, the petitioner alleged against non-commercial policy loans from policy banks and state-owned commercial banks of China. However, it failed to provide any sufficient evidence to substantiate that non-commercial policy loan exists in the ARW industry. Moreover, many of these programs were overlapping and over-crossing in this petition. This not only adds to the difficulty of Chinese government and Chinese exporters to respond to this case but also adds burdens to the Australian investigation authority.

Thirdly, as for the allegation regarding the injury and threat of injury as well as the causal links, the facts that the petitioner relied on are in many aspects exaggerated and distorted.

II. Injury and Causal link

Firstly, the GOC would draw the attention of Australia Customs to the following that some Chinese enterprises are questioning whether there is an ARW industry in Australia. The Chinese government considers that, if there is no ARW industry in Australia, obviously there should not be any injury or threat of injury against Australia domestic industry. In this case, the investigation shall not be initiated. Even if there is an ARW producer in Australia, the output of that producer could be very limited in amount which cannot meet the demands of Australian market. If the Chinese products were to be curtailed away from the Australian market by any AD or CVD measures, the automotive makers in Australia such as GM and Ford would suffer the most. These automobile enterprises have a much bigger contribution in term of providing local job opportunities than the ARW industry. Therefore, we hope the Australian side weights the pros and cons and give prudent considerations to the interests of downstream users.

Secondly, the investigation period for industry is excessively long as suggested by the petition. The petitioner suggested 8 years to be the investigation period for injury, namely from 2003 to 2011, which is a very rare practice in AD and CVD investigations among the WTO members. GOC believes it is also a practice that is opportunistic and unprincipled.

Thirdly, gauging the injury situation in Australia with WTO-stipulated indicators, GOC thinks there is no injury on the part of Australian industry. GOC have read through the description in the petition and GOC have looked at the indicators, such as the cost, price, sales profit, assets, investment, R&D expenditure, capacity utilization and changes in inventories, GOC believes that any sign of injury on the part of

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Australian industry cannot be found. Rather GOC has discovered that except for the year of 2009 where some of the indicators showed a downward trend, the indicators before and after that period have showed a very positive trend.

Fourthly, regarding the causal link, even if there is an alleged injury, such injury is not caused by the Chinese exports. There are three reasons. If GOC looks at the P32-P33 of Petition, regarding the changing patterns of the injury indicators and the points where there were significant changes taking place, the problems of all these indicators, especially the alleged reduction of price, profit margin and manufacturing fees, are that they all concentrated on the period of economic crisis, especially in the year of 2009 which was the peak of economic crisis. Therefore, such fluctuation of the economic indicators as alleged by the petitioner actually are the result from the financial crisis. The second reason is that, aside from the economic crisis, such downward trend of the profit and profit margin also has something to do with the business strategies that are taken by the enterprises. The Chinese side also looks at the petition P34 about the changing of R&D expenditure, from June 2010 to 2011, the investment have capped at a very high level. The actual investment paid actually increased by several times. Therefore, if the financial cost of such investment is portioned to the sale prices, probably it would distort or exaggerate the changes of profit indicators in 2011. Therefore, GOC believes that the decrease of the profit margin as alleged by the petitioner is the result of the business strategies that are taken by the enterprises. As a third reason, GOC also finds an example in the petition that in 2009 the Mitsubishi has closed its factory in Adelaide, Australia, and this factory actually has stopped production in the fiscal year of 2008. Mitsubishi Australia is a very important consumer of ARW in Australia market. Its withdrawal from this market would surely cut the domestic demand and to certain extent affect the turnover and the profits of the Australia ARW industry.

III. Parallel antidumping and countervailing investigation against Chinese products

The parallel antidumping and countervailing investigations against the Chinese products may result in double remedy. In the petition, on one hand, the petitioner alleged that there is special market circumstance in China; because there is price disparity between aluminum future market price in China and the price of LME, the primary aluminum market in China is not comparative; therefore, the normal value of aluminum wheels in China cannot be calculated on the basis of domestic cost or price; rather, an analogue country price is needed. On the other hand, the petitioner alleged that there is government's provision of aluminum at a price lower than the fair market value in claiming that the price of ARW in China is subsidized. However, if the antidumping and countervailing investigations are initiated in parallel and both investigations look at the same price disparity, as requested by the petitioner, then that may result in the double-counting of the same price disparity and may result in the

double-remedy. Such practice is neither in line with the WTO SCM agreement nor with the appellate body findings in DS379.

IV. Provision of primary aluminum at less than adequate remuneration as alleged in the petition

Firstly, the petitioner said that the GOC controls the Chinese aluminum price is incorrect. In China we have already established the market system and the corporate system and this progress has been appreciated by Australia government. China is completely ruled by law and full accounting principle has been already established in China. Such price control does not really exist in China. The Chinese enterprises have to carry on commercial operation and management, taking part in market competition for survive and profit. All Chinese aluminum suppliers are working in such conditions.

Secondly, the petitioner attempted to use the London price to prove that the Chinese price is noncompetitive, which is far from reality. China is the largest producer and consumer of the aluminum in the world and Chinese market is the major compose of the world market, if the Chinese is noncompetitive, London market is also noncompetitive. As matter as fact, just as Chinese government emphasized in the case of aluminum extrusions, London market is consist of large speculators and monopolist who were greedy to rise market price however, the Chinese futures exchange is consist of many small and medium enterprises and this is real competitive market.

Thirdly, Aluminium prices in China are not manipulated by the GOC. The GOC has given full disclosure to Australian Customs of the measures it took at the time of the Global Financial Crisis to create confidence in markets. Similar measures were implemented by other countries, including Australia. The allegation that aluminium pricing somehow created a particular market situation in the downstream aluminium extrusions market was rejected by Customs in the aluminium extrusions investigation. It must be rejected again. It cannot form a proper basis for an investigation into exactly the same thing this time.

V. Public body.

GOC notes that on August 2, 2011, the Australia customs published the notice saying it will implement WTO appellate body finding in DS379 concerning public body. According to such notice, Australia domestic applicants are required to provide reasonable and such evidence regarding the public body claims and China showed welcome to this development. However, in the petition in this case apart from setting preliminary determination of US steel wheel case, there was no prima facie evidence provided to show state-owned enterprises constitute public body. As a matter of fact, the Chinese state-owned enterprises are fully commercialized and independently

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operating economic entities, and production and decisions are free from government control or influence. According to Chinese law, all enterprises, no matter state-owned or not state-owned are independent in their business operation, including signing contract, daily operation, pricing and business negotiations, and they have to response for their profit and lost, and they are not controlled and influenced by the GOC. Therefore, on this issue, GOC would like to remind Australia government again that DS379 finding by the WTO appellate body shall be abided by.

VI. Views regarding some of specific program as alleged in the petition.

Firstly, GOC thanks the Customs again for agreeing to postpone the date of consultation as requested. And on October 27th, GOC received new allegations concerning quite number of programs, and for these new programs GOC did not have enough time to make full analysis.

For the programs mentioned below, GOC has only made some preliminary analysis, but from the angle of many exporting enterprises of China, it is highly likely that they did not benefit from a lot of programs. Therefore GOC hopes the Australian side can give a due consideration that whether or not all of these programs should be investigated.

We also noticed that in the petition, there are 10 categories and 174 programs in total, such a large number of programs are very rare things in recent years in the CVD investigation against China. And only for the one category of Export Brand, the petition listed 75 programs, which is unimaginable.

After analyzing this petition, GOC has categorized all the programs into the following categories which shall not be investigated at all.

The first category is the programs without sufficient evidence. These programs include but not limit the following. For example, in Page 102, Category (vii), 1, Preferential, non-commercial loans from policy banks and state owned commercial banks and Export rebates for nonferrous products with high technology and high value-added, which is in Page 103, Category (vii), 5. Another example is in Page 103, Category (viii) 2, VAT exemptions.

The second category that GOC believes shall not be investigated covers the programs that had been abolished and removed. First of all, these programs that were terminated include all the programs concerning the FIE income tax programs. GOC notes that all together more than 20 programs in this regard have been listed, including but not limited to the following category: *preferential tax policies,* item 7-13,16,17(Page 96-97); *geographical*, item 1,2,4,7(Page 98); *provincial & zone,* item 5,9,10,13(Page 99-101); *equipment and capital,* item 4,6,7(Page 101-102). The above programs were all terminated. Another category is the abolished programs which shall not be investigated, including *exemption of tariff and import VAT for imported technologies and equipment,* item 8 (Page 102). In the category of the abolished programs, GOC

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would like to particularly mention one kind of program, namely, the export brand related programs. Regarding this kind of programs, the petitioner listed out 75 programs. Actually, 73 of the programs were newly added on October 27th, so the Chinese side did not have time to have a study on each one of them, and these programs are all at the local levels. And GOC would like to point out that the export brand policies have already been abolished at the central government level. Therefore, as the government at locality also stopped such policies to revoke the top brand and the most of the 75 programs have already been abolished, even if there are cases that the documents have not been abolished in formality, the implementation has already stopped.

On the third category, GOC believes that the grant programs without specificity should not be investigated. These programs are internationally popular practices with reasonable and internationally acknowledged policy goals, there are however some conditions in implementation to make grants, but however they do not constitute specificity. These programs can be further divided into two parts; the first kind is the grants for the SMEs including grants for development and technologies, items 1-4(Page 103), which include *development funds for SMEs*, and *matching funds for international market development for SMEs*, *fund for international market exploration by SMEs* and *special fund for establishment of service system for SMEs*. And second part of such programs are grants for assisting research and development which include *innovative experimental enterprises grant* and *venture investment fund for high-tech industry* and *state fund for R&D technology*, they are on Page 104, category 9, item 7,9,10.