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**CHINA – INITIATION OF CVD INVESTIGATION ON IMPORTS
OF CERTAIN DAIRY PRODUCTS (EU)**

REQUEST FOR CONSULTATIONS BY THE EUROPEAN UNION

The following communication, dated 23 September 2024, from the delegation of the European Union to the delegation of China, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request 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 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) concerning the initiation of an anti-subsidy (AS) investigation on certain dairy products from the European Union (EU).

The measure that the EU would like to address in these consultations is the initiation of an anti-subsidy investigation against imports of certain dairy products from the European Union by Notice No.34 (2024) of 21 August 2024¹ of the Ministry of Commerce of China (MOFCOM).

The EU is concerned that the initiation is unfounded and retaliatory in nature. This initiation was enacted right after the EU had disclosed its definitive findings in the battery electric vehicle investigation. A link between this action and EU's investigation on battery electric vehicles appears evident. Moreover, this specific initiation represents the last episode in a succession of investigations initiated by the Chinese authorities against EU products within few months since the EU initiated its investigation on battery electric vehicles and the EU is concerned that a pattern of abuse of trade defence measures is emerging. It is in those specific circumstances that the EU has decided to act with respect to the initiation of the AS investigation, which threatens to disrupt the normal trade flows on dairy products from the EU to China in an unlawful manner.

The measure at issue appears to be inconsistent with:

- Articles 11.2, 11.3 and 11.9 in conjunction with Article 1.1(b) of the SCM Agreement because the application did not include sufficient evidence of the existence of a countervailable subsidy and, in any event the Chinese authorities failed to review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence was sufficient to justify the initiation of the AS investigation and failed to reject the application. In particular, the application merely asserted and assumed, without substantiating by relevant evidence, the pass-through of the benefit conferred upon dairy farmers to the processors and exporters of the allegedly subsidized exports.
- Articles 11.2, 11.3 and 11.9 in conjunction with Articles 1.2 and 2 of the SCM Agreement because the application did not include sufficient evidence of the existence of a countervailable subsidy and, in any event, the Chinese authorities failed to review the accuracy and adequacy of the evidence provided in the application to determine whether the

¹ https://www.mofcom.gov.cn/zwgk/zcfb/art/2024/art_0f008c8cc1a64811821d0bb87cfcb34b.html , last accessed on 14 September 2024.

evidence was sufficient to justify the initiation of the AS investigation and failed to reject the application. In particular, the application merely asserted and assumed, without substantiating by relevant evidence, that all financial contributions to dairy farmers are specific. This assumption is incorrect, considering that financial contributions under the Common Agricultural Policy do not explicitly limit access to certain enterprises, are available to all farmers throughout the EU, and operate on the basis of objective criteria or conditions that are neutral, automatic and strictly adhered to, that do not favour certain enterprises over others, and are economic in nature and horizontal in application, as well as being clearly spelled out in official documents. There are no reasons to believe that those financial contributions are specific pursuant to Article 2 of the SCM Agreement.

- Articles 11.2(i), 11.2(iv), 11.3 and 11.9 in conjunction with Articles 15.2 and 15.4 of the SCM Agreement because the application did not include sufficient evidence on the existence of injury and, in any event, the Chinese authorities failed to review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation and failed to reject the application. In particular, the application failed to provide all relevant evidence listed in Articles 11.2(i) and 11.2(iv) of the SCM Agreement. For example, the application does not include a description of the volume and value of the domestic production of the like product by the applicants and this does not appear to be justified by confidentiality reasons. Moreover, the data on some injury indicators was based on less than half of the domestic production and there was no explanation as to why the applicants could not provide information on the domestic industry as a whole or why the data provided was representative of the injury to the domestic industry as a whole.
- Articles 11.2 and 11.3 in conjunction with Article 15.5 of the SCM Agreement because the application failed to include sufficient evidence of the existence of a causal link between the subsidized imports and the alleged injury and, in any event, the Chinese authorities failed to review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation and failed to reject the application. In particular, the application did not provide evidence on all relevant known factors other than the subsidized imports which at the same time are injuring the domestic industry. For example, when analysing the impact of non-EU imports, the application does not analyse the evolution of their market share, nor does it take into account the market share per non-EU country. Similarly, the application failed to provide sufficient evidence on the domestic industry's investment and costs which could be other known factors which at the same time are injuring the domestic industry and the injuries caused by these other factors must not be attributed to the alleged subsidized imports.
- Article 12.4 of the SCM Agreement because the investigating authority treated as confidential, without showing good cause, certain information in the application. In particular, given the number of companies represented by the applicants, certain information on injury, such as profitability, should have been provided, at least in ranges. Given the large number of companies involved, indexation obscures the true picture on injury.
- Article 11.3 of the SCM Agreement because China initiated an investigation without the required sufficient evidence.
- Article 11.1 in conjunction with Article 11.4, and Articles 12.1 and 12.3 of the SCM Agreement because China initiated the investigation without ensuring that the written application for an investigation was made "by or on behalf of the domestic industry". In particular, China did not provide any assessment on the legal capacity of the applicants to represent and lodge the application on behalf of the domestic industry permitting interested parties to see all information that is relevant to the presentation of their cases.

The measure identified in this Request appears to nullify or impair the benefits accruing to the EU directly or indirectly under the covered agreements.

The EU reserves the right to address additional measures and claims under other provisions of the covered agreements regarding the above matters during the course of the consultations.

The EU looks forward to receiving China's reply to this request and to finding a mutually convenient date and place for the consultations.
