

# WORLD TRADE ORGANIZATION

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## UNITED STATES – DEFINITIVE ANTI-DUMPING AND COUNTERVAILING DUTIES ON CERTAIN PRODUCTS FROM CHINA

### Request for Consultations by China

The following communication, dated 19 September 2008, 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.

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My authorities have instructed me to request consultations with the Government of the United States pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the DSU), Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Article 30 of the *Agreement on Subsidies and Countervailing Measures* (the SCM Agreement) and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the AD Agreement).

This request concerns the definitive anti-dumping and countervailing duties imposed by the United States pursuant to the final anti-dumping and countervailing duty determinations and orders issued by the US Department of Commerce in the investigations listed below.

### **Investigations A-570-910 and C-570-911 ("CWP")**

- Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 Federal Register 31970 (5 June 2008).
- Notice of Antidumping Duty Order: *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 Federal Register 42547 (22 July 2008).
- *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 Federal Register 31966 (5 June 2008).
- *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 Federal Register 42545 (22 July 2008).

**Investigations A-570-912 and C-570-913 ("OTR")**

- *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China:* Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 Federal Register 40485 (15 July 2008).
- *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China:* Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 73 Federal Register 51624 (4 September 2008).
- *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China:* Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 Federal Register 40480 (15 July 2008).
- *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China:* Countervailing Duty Order, 73 Federal Register 51627 (4 September 2008).

**Investigations A-570-914 and C-570-915 ("LWRP")**

- Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: *Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 Federal Register 35652 (24 June 2008).
- Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders, 73 Federal Register 45403 (5 August 2008).
- *Light-Walled Rectangular Pipe and Tube From People's Republic of China:* Final Affirmative Countervailing Duty Investigation Determination, 73 Federal Register 35642 (24 June 2008).
- *Light-Walled Rectangular Pipe and Tube from the People's Republic of China:* Notice of Countervailing Duty Order, 73 Federal Register 45405 (5 August 2008).

**Investigations A-570-916 and C-570-917 ("LWS")**

- *Laminated Woven Sacks from the People's Republic of China:* Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 Federal Register 35646 (24 June 2008).
- Notice of Antidumping Duty Order: *Laminated Woven Sacks From the People's Republic of China*, 73 Federal Register 45941 (7 August 2008)
- *Laminated Woven Sacks from the People's Republic of China:* Final Affirmative Countervailing Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 Federal Register 35639 (24 June 2008).

- *Laminated Woven Sacks From the People's Republic of China*: Countervailing Duty Order, 73 Federal Register 45955 (7 August 2008).

China considers that the foregoing measures, which include the conduct of the underlying anti-dumping and countervailing duty investigations, are inconsistent with the obligations of the United States under, *inter alia*, Articles I and VI of the GATT 1994, Articles 1, 2, 10, 12, 13, 14, 19, and 32 of the SCM Agreement, Articles 1, 2, 6, 9, and 18 of the AD Agreement, and Article 15 of the *Protocol on the Accession of the People's Republic of China* (the Protocol of Accession).

These inconsistencies arise in connection with each of the foregoing measures, and include, *inter alia*:<sup>1</sup>

- (1) in connection with the alleged provision of goods for less than adequate remuneration –
  - (a) the US authorities' determination that certain state-owned enterprises (SOEs) are "public bodies" within the meaning of Article 1.1(a)(1) of the SCM Agreement;
  - (b) in the absence of a valid determination that certain SOEs are public bodies, the US authorities' failure to make a determination that China "entrusts or directs" SOEs to provide goods to producers of subject merchandise, within the meaning of Article 1.1(a)(1)(iv) of the SCM Agreement;
  - (c) even assuming a valid determination that certain SOEs are public bodies, the US authorities' failure to make a determination that SOEs "entrust or direct" trading companies to provide goods to producers of subject merchandise, within the meaning of Article 1.1(a)(1)(iv) of the SCM Agreement;<sup>2</sup>
  - (d) the US authorities' determination that the sale of goods by trading companies to producers of subject merchandise confers a countervailable subsidy with the meaning of Article 1 of the SCM Agreement and a benefit under the guidelines set forth in Article 14(d) of the SCM Agreement;
  - (e) the US authorities' failure to determine whether the alleged benefit received by trading companies was passed through to producers of subject merchandise, in violation of Article VI:3 of the GATT 1994 and Articles 10, 14, 19.1, 19.4, and 32.1 of the SCM Agreement;
  - (f) the US authorities' inclusion in subsidy benefit calculations of only those transactions that produced a positive benefit, while excluding transactions that yielded no benefit, in violation of Article VI:3 of the GATT 1994 and Articles 10, 14, 19.1, 19.4, and 32.1 of the SCM Agreement;

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<sup>1</sup> Unless otherwise noted, all inconsistencies relating to the GATT 1994, the SCM Agreement, and the Protocol of Accession arise in connection with each of the CVD measures specified above, while all inconsistencies relating to the AD Agreement arise in connection with each of the anti-dumping measures specified above.

<sup>2</sup> The inconsistencies set forth in paras. 1(c) – 1(e) do not arise in connection with the LWS CVD measures.

- (2) in connection with the alleged provision of land and land use rights for less than adequate remuneration –
  - (a) the failure of the US authorities to demonstrate specificity under Articles 2.1 and 2.2 of the SCM Agreement, and to clearly substantiate these determinations of specificity on the basis of positive evidence, as required by Article 2.4 of the SCM Agreement;<sup>3</sup>
- (3) in connection with the alleged provision of loans on preferential terms –
  - (a) the US authorities' determination that certain state-owned commercial banks (SOCBs) are "public bodies" within the meaning of Article 1.1(a)(1) of the SCM Agreement;<sup>4</sup>
  - (b) in the absence of a valid determination that certain SOCBs are public bodies, the US authorities' failure to make a determination that China "entrusts or directs" SOCBs to provide loans to producers of subject merchandise, within the meaning of Article 1.1(a)(1)(iv) of the SCM Agreement;
  - (c) the failure of the US authorities to demonstrate specificity under Articles 2.1 and 2.2 of the SCM Agreement, and to clearly substantiate these determinations of specificity on the basis of positive evidence, as required by Article 2.4 of the SCM Agreement;
- (4) in connection with each instance in which the US authorities resorted to a benchmark outside of China for the purpose of determining the existence and amount of any alleged subsidy benefit –
  - (a) the US authorities' rejection of prevailing terms and conditions in China as the basis for determining whether, and to what extent, subject producers received a subsidy benefit under the methodologies set forth in Article 14 of the SCM Agreement;
  - (b) the US authorities' rejection of prevailing terms and conditions in China as the basis for determining whether, and to what extent, producers of subject merchandise received a subsidy benefit, without making a finding of "special difficulties" as required under Article 15 of the Protocol of Accession;
  - (c) the US authorities' use of benefit methodologies that the United States did not notify to the Committee on Subsidies and Countervailing Measures, as required by Article 15(c) of the Protocol of Accession;
- (5) in connection with all countervailing duty determinations and orders specified above –
  - (a) the failure of the US authorities to take all necessary steps to ensure that the imposition of a countervailing duty order is in accordance with Article VI of

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<sup>3</sup> The inconsistency set forth in para. 2(a) does not arise in connection with the CWP CVD measures.

<sup>4</sup> The inconsistencies set forth in paras. 3(a) – 3(c) do not arise in connection with the LWRP CVD measures.

- the GATT 1994 and the SCM Agreement, as required by Article 10 of the SCM Agreement;
- (b) the use of a specific action against alleged subsidies other than in accordance with the provisions of the GATT 1994, as interpreted by the SCM Agreement, in violation of Article 32.1 of the SCM Agreement;
  - (c) the imposition of countervailing duties in a manner inconsistent with the requirements of Article VI:3 of the GATT 1994;
- (6) in connection with the US authorities' use of a non-market economy (NME) methodology for the purpose of determining the existence and amount of alleged dumping under Article VI of the GATT 1994 and the AD Agreement, simultaneously with the determination of subsidization and imposition of countervailing duties on the same subject merchandise –
- (a) the failure of the US authorities to ensure that the final affirmative determination of subsidization, and the imposition of countervailing duties, were based on the amount of subsidy found to exist, as required by Article 19.4 of the SCM Agreement;<sup>5</sup>
  - (b) the use by the US authorities of a specific action against subsidization that is not in accordance with the GATT 1994, as interpreted by the SCM Agreement, in violation of Article 32.1 of the SCM Agreement;
  - (c) the US authorities' failure to take all necessary steps to ensure that the imposition of countervailing duties was in accordance with Article VI of GATT 1994 and the SCM Agreement, as required by Article 10 of the SCM Agreement;
  - (d) the US authorities' levying of anti-dumping and countervailing duties in excess of the "appropriate amounts," in violation of Article 9.2 of the AD Agreement and Article 19.3 of the SCM Agreement, respectively;
  - (e) the US authorities' failure to ensure a fair comparison between the export price and normal value, in violation of Article 2.4 of the AD Agreement;
  - (f) the failure of the US authorities to ensure that the final affirmative determination of dumping, and the imposition of anti-dumping duties, were based on the amount of dumping found to exist, as required by Article 9.3 of the AD Agreement.
- (7) in connection with the conduct of the underlying anti-dumping and countervailing duty investigations –
- (a) the US authorities' failure to invite China for consultations regarding new subsidy allegations, as required by Article 13.1 of the SCM Agreement;

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<sup>5</sup> The inconsistencies set forth in paras. 6(a) – 6(f) relate to each of the CVD and AD measures specified above, as well as to the combined effect of the CVD and AD measures in each of the specified investigations.

- (b) the US authorities' failure to allow 30 days for responses to questionnaires issued in connection with subsidy allegations made after the initiation of the investigation, as required by Article 12.1.1 of the SCM Agreement;
- (c) the US authorities' failure to take due account of any difficulties experienced by interested parties in supplying information requested in questionnaires, as required by Article 12.11 of the SCM Agreement;
- (d) the US authorities' failure to provide notice to interested parties of the information which the U.S. authorities required to make a determination with respect to whether certain entities are "public bodies" within the meaning of Article 1.1(a)(1) of the SCM Agreement, as required by Article 12.1 of the SCM Agreement;
- (e) the US authorities' failure to inform interested parties of the essential facts under consideration with respect to whether certain entities are "public bodies" within the meaning of Article 1.1(a)(1) of the SCM Agreement, as required by Article 12.8 of the SCM Agreement;
- (f) the US authorities' failure to provide notice to interested parties of the information which the US authorities required to determine whether the simultaneous application of anti-dumping and countervailing duties results in a double remedy for the same conduct, as required by Article 12.1 of the SCM Agreement and Articles 2.4 and 6.1 of the AD Agreement;
- (g) the US authorities' failure to inform interested parties of the essential facts under consideration with respect to whether the simultaneous application of anti-dumping and countervailing duties results in a double remedy for the same conduct, as required by Article 12.8 of the SCM Agreement and Article 6.9 of the AD Agreement; and
- (h) the US authorities' use of adverse inferences and facts available in a manner inconsistent with Article 12.7 of the SCM Agreement, including, in particular, those instances in which the US authorities drew "adverse inferences" or relied upon "neutral" or "adverse" facts available, having failed to request information from interested parties concerning the factual issue in question.

China reserves the right to raise additional claims and legal matters regarding the above-mentioned measures during the course of the consultations.

China looks forward to receiving the reply of the Government of the United States to this request and to setting a mutually convenient date for consultations.

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