

**CHINA – COUNTERVAILING AND ANTI-DUMPING DUTIES ON
GRAIN ORIENTED FLAT-ROLLED ELECTRICAL STEEL
FROM THE UNITED STATES**

Request for Consultations by the United States

The following communication, dated 15 September 2010, from the delegation of the United States to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of 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*, Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") (to the extent that Article 30 incorporates Article XXIII of the GATT 1994), and Article 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement") with respect to China's measures imposing countervailing duties and anti-dumping duties on grain oriented flat-rolled electrical steel ("GOES") from the United States, as set forth in Ministry of Commerce of the People's Republic of China ("MOFCOM") Notice No. 21 [2010], including its annexes. China's measures appear to be inconsistent with China's obligations under the provisions of the GATT 1994, the SCM Agreement and the AD Agreement.

In particular, China's countervailing and anti-dumping measures on GOES from the United States appear to be inconsistent with the following provisions of the GATT 1994, the SCM Agreement and the AD Agreement.

1. Articles 10 and 19 of the SCM Agreement, because China improperly determined that government purchases under US Buy American Laws conferred a "benefit".
2. Article 12.8 of the SCM Agreement, because China failed to disclose the "essential facts" underlying its determinations.
3. Article 12.7 of the SCM Agreement, because China improperly based its determinations on the facts available.
4. Article 22.3 of the SCM Agreement, because China failed to provide in sufficient detail the findings and conclusions it reached on all issues of fact and law it considered material.

5. Article 22.5 of the SCM Agreement because China failed to make available all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures.

6. Article 11.2 of the SCM Agreement because: (a) the application for a countervailing duty investigation failed to contain information reasonably available to the applicant regarding the existence of a financial contribution, a benefit, specificity, injury and causation; and (b) there was not sufficient evidence in the application to justify the initiation of an investigation.

7. Article 11.3 of the SCM Agreement because China failed to review appropriately the accuracy and adequacy of the evidence provided in the application.

8. Articles 12.3 and 12.4.1 of the SCM Agreement, because China failed to provide, or require the applicant to provide, adequate non-confidential summaries of allegedly confidential information.

9. Article 22.2(iii) of the SCM Agreement, because China included in its countervailing duty investigation the *American Recovery and Reinvestment Act of 2009* ("Recovery Act") and laws of the various US states dealing with the government purchase of goods.

10. Articles 15.1, 15.2, 15.5, 12.8, of the SCM Agreement, and Articles 3.1, 3.2, 3.5, 6.9 and 12.2 of the AD Agreement, because: (a) China's analysis of the effect of imports under investigation and alleged causal link was not based upon an objective examination on the basis of positive evidence; (b) China failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material; and (c) China failed to disclose the "essential facts" underlying its determinations.

11. Article 10 of the SCM Agreement as a consequence of the breaches of the SCM Agreement described above.

12. Article 1 of the AD Agreement as a consequence of the breaches of the AD Agreement described above.

13. Article VI of the GATT 1994.

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

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
