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**CHINA – MEASURES IMPOSING ANTI-DUMPING DUTIES ON HIGH-PERFORMANCE
STAINLESS STEEL SEAMLESS TUBES ("HP-SSST") FROM JAPAN**

**NOTIFICATION OF AN APPEAL BY JAPAN
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),
AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 20 May 2015, from the delegation of Japan, is being circulated to Members.

Pursuant to Article 16.4 and Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 20 of the Working Procedures for Appellate Review ("Working Procedures"), Japan hereby notifies the Dispute Settlement Body of its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report in *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan* (WT/DS454/R) ("Panel Report"), and certain legal interpretations developed by the Panel in this dispute.

For the reasons to be elaborated in its submissions and oral statements to the Appellate Body, Japan appeals the following errors in the issues of law in the Panel Report and legal interpretations developed by the Panel, and requests the Appellate Body to reverse and modify the related findings, conclusions and recommendations of the Panel, and where indicated to complete the analysis.¹

1. With respect to Japan's claims that the price effects analysis conducted by the Ministry of Commerce of the People's Republic of China ("MOFCOM") is inconsistent with Articles 3.1 and 3.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement"):

- a. The Panel erred in its interpretation and application of Articles 3.1 and 3.2 of the Anti-Dumping Agreement in concluding that an investigating authority may complete its analysis of the "effect of the dumped imports on prices" under Article 3.2 by simply finding price undercutting to exist solely based on the consideration of whether subject import prices are mathematically lower than prices of domestic like products, without consideration of whether, by selling at lower prices, subject imports have the effect of giving rise to an actual decrease or prevention of increase in prices in the domestic market for like products, or alternatively taking the place of domestic like products.² Japan requests the Appellate Body to reverse and modify the Panel's legal interpretation in this regard, and complete the analysis to find instead that MOFCOM acted inconsistently with Articles 3.1 and 3.2 of the Anti-Dumping Agreement by concluding an analysis of the "effect of the dumped imports on prices" with a finding of price

¹ Pursuant to Rule 20(2)(d)(iii) of the Working Procedures, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of Japan to refer to other paragraphs of the Panel Report in the context of its appeal.

² Panel Report, paras. 7.124-7.130, 7.138, 7.152, 7.155.

undercutting for Grade C solely based on a mathematical comparison of imported and domestic Grade C prices.³

- b. The Panel erred in interpreting Articles 3.1 and 3.2 of the Anti-Dumping Agreement to mean that it is sufficient under Article 3.2 for an investigating authority to find mathematically lower prices of subject imports at a single point in time during the period of investigation ("POI").⁴ Japan requests the Appellate Body to reverse and modify the Panel's legal interpretation in this regard.

2. With respect to Japan's claims that MOFCOM's impact analysis is inconsistent with Articles 3.1 and 3.4 of the Anti-Dumping Agreement:

- a. The Panel erred in its interpretation and application of Articles 3.1 and 3.4 of the Anti-Dumping Agreement in concluding that an investigating authority may find the required "consequent impact" by finding simply that "the state of the domestic industry shows injury, and the subject imports are sold at prices that undercut certain like products produced and sold by that industry", without any further consideration of the relationship between subject imports and the state of the domestic industry, or the explanatory force of subject imports on the state of the domestic industry, and the logical connection between the volume and price effects found to exist under the Article 3.2 analysis and the state of the domestic industry.⁵ Japan requests the Appellate Body to reverse and modify the Panel's legal interpretation in this regard, and complete the analysis to find that MOFCOM acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement by failing to examine the relationship between subject imports and the state of the domestic industry, and by conducting an impact analysis that was at odds with and did not follow from its volume and price effects analyses.
- b. The Panel erred in finding that Japan's claim that MOFCOM failed to examine whether subject imports provided explanatory force for the state of the domestic industry was outside the Panel's terms of reference.⁶ Japan requests that the Appellate Body reverse the Panel's finding in this regard, and complete the analysis to find that MOFCOM acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement by failing to examine whether subject imports provided explanatory force for the state of the domestic industry.

3. With respect to Japan's claims that MOFCOM's causation analysis is inconsistent with Articles 3.1 and 3.5 of the Anti-Dumping Agreement:

- c. The Panel failed to make an objective assessment of the matter before it as required by Article 11 of the DSU by erroneously concluding that Japan has not advanced independent claims under Articles 3.1 and 3.5 of the Anti-Dumping Agreement in those instances where the Panel had rejected (or not evaluated) one of Japan's claims under Articles 3.1 and 3.2 concerning MOFCOM's price effects analysis or under Articles 3.1 and 3.4 concerning MOFCOM's impact analysis, as well as by failing to examine and by abstaining from making findings on those independent claims.⁷ Japan requests that the Appellate Body complete the analysis to find that MOFCOM acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement in those instances where Japan's claims under Articles 3.1 and 3.2 concerning MOFCOM's price effects analysis or under Articles 3.1 and 3.4 concerning MOFCOM's impact analysis have been rejected by the Panel or the Appellate Body.

³ This dispute concerns three grades of HP-SSST products: (i) TP347HFG (Grade A); (ii) S30432 (Grade B); and (iii) TP310HNB (Grade C).

⁴ Panel Report, paras. 7.125, 7.139-7.142.

⁵ Panel Report, paras. 7.152-7.155.

⁶ Panel Report, para. 6.31 and note 274.

⁷ Panel Report, paras. 6.43, 7.192.