

**UNITED STATES – COUNTERVAILING DUTY MEASURES ON  
CERTAIN PRODUCTS FROM CHINA**

Request for the Establishment of a Panel by China

The following communication, dated 20 August 2012, from the delegation of China to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 25 May 2012, the People's Republic of China requested consultations with the United States of America 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), and Article 30 of the Agreement on Subsidies and Countervailing Measures (the SCM Agreement). This request for consultations concerned the preliminary and final countervailing duty measures issued by the United States Department of Commerce (the "USDOC"), as described below.

Consultations were held on 25 June 2012 and 18 July 2012 with a view to reaching a mutually satisfactory solution. These consultations clarified certain issues pertaining to this matter, but failed to resolve the dispute. Therefore, China respectfully requests, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of the GATT 1994, and Article 30 of the SCM Agreement, that the Dispute Settlement Body ("DSB") establish a Panel to examine this matter. China asks that this request be placed on the agenda of the DSB meeting to be held on 31 August 2012. China further requests that the Panel have the standard terms of reference, as set forth in Article 7.1 of the DSU.

**A. SPECIFIC MEASURES AT ISSUE**

This request for establishment of a panel concerns the preliminary and final countervailing duty measures identified in Appendix 1.<sup>1</sup> These measures were issued by the USDOC. The measures include the determination by the USDOC to initiate the identified countervailing duty investigations, the conduct of those investigations, any preliminary or final countervailing duty determinations issued in those investigations, any definitive countervailing duties imposed as a result of those investigations, as well as any notices, annexes, decision memoranda, orders, amendments, or other instruments issued by the United States in connection with the countervailing duty measures identified in Appendix 1.

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<sup>1</sup> For ease of reference, China will use certain short names and abbreviations to refer to the individual investigations at issue. Appendix 2 contains a table indicating the short names and abbreviations associated with each investigation.

The measures at issue also include the "rebuttable presumption" established and applied by the USDOC, under which the USDOC considers majority government ownership of an enterprise sufficient to determine that an enterprise is a "public body" within the meaning of Article 1.1 of the SCM Agreement, unless a party is able to demonstrate that majority government ownership does not result in "control" of the enterprise.<sup>2</sup> (China hereafter refers to this measure as the "rebuttable presumption").

## B. LEGAL BASIS OF THE COMPLAINT

China considers that the countervailing duty measures specified above are inconsistent with the obligations of the United States under, *inter alia*, Article VI of the GATT 1994, Articles 1, 2, 10, 11, 12, 14, and 32 of the SCM Agreement, and Article 15 of the *Protocol on the Accession of the People's Republic of China* (the "Protocol of Accession").

### 1. "As Applied" Claims

China considers that the initiation and conduct of the identified countervailing duty investigations, as well as the countervailing duty determinations, orders, and any definitive countervailing duties imposed pursuant thereto, are inconsistent, at a minimum, with the obligations of the United States specified below.

- (a) In connection with the alleged provision of input goods for less than adequate remuneration:
  - (1) Articles 11.1, 11.2, and 11.3 of the SCM Agreement, because the United States initiated countervailing duty investigations in respect of allegations that state-owned enterprises ("SOEs") confer countervailable subsidies through their sales of inputs to downstream producers, in the absence of sufficient evidence in the petition to support an allegation that SOEs constitute "public bodies" within the meaning of Article 1.1(a)(1) of the SCM Agreement, and in the absence of a sufficient review of the petition by the USDOC in respect of this allegation;<sup>3</sup>
  - (2) Article 1.1(a)(1) of the SCM Agreement, because the USDOC incorrectly determined, or did not have a sufficient basis to determine, that certain SOEs are "public bodies" within the meaning of that provision;<sup>4</sup>

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<sup>2</sup> See, e.g., KASR I&D, pp. 42-44; SCASP I&D pp. 64-65; PG I&D pp. 67-69. The USDOC has stated that this rebuttable presumption is "reflected" in the "Preamble" to its countervailing duty regulations. See KASR I&D, p. 42, citing *Countervailing Duties; Final Rule*, 63 Fed. Reg. 65,348 (November 25, 1998) ("CVD Preamble"). For this purpose, the CVD Preamble is hereby included as a measure at issue in this dispute.

<sup>3</sup> China limits this claim to the countervailing duty initiation determinations in Steel Wire, Steel Cylinders, Steel Wheels, Solar Panels, Wind Towers, and Steel Sinks. These are the countervailing duty investigations that the USDOC initiated after the issuance of the Appellate Body Report in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (WT/DS379/AB/R) (11 March 2011). While China considers that the USDOC's initiation determinations prior to this date were also in error, China is limiting this claim to those initiation determinations concerning the alleged provision of inputs for less than adequate remuneration in which the USDOC acted in open disregard of the Appellate Body's interpretation of the term "public body" in Article 1.1(a)(1) of the SCM Agreement.

<sup>4</sup> This claim arises in respect of the determinations by the USDOC that certain SOEs provided inputs such as hot-rolled steel, steel wire rod, steel rounds and billets, stainless steel coil, caustic soda, primary aluminum, green tubes, zinc, and papermaking chemicals for less than adequate remuneration, in the following investigations: SPP, SLP, TBLG, KASR, OCTG, SWS, SG, WD, SCASP, PG, DP, AE, SWH, GSW, and SCY.

- (3) Articles 11.1, 11.2, and 11.3 of the SCM Agreement, because the USDOC initiated countervailing duty investigations in respect of the alleged provision of inputs for less than adequate remuneration, in the absence of sufficient evidence in the petition to support an allegation that any such subsidy would be specific under Article 2 of the SCM Agreement, and in the absence of a sufficient review of the petition by the USDOC in respect of this allegation;<sup>5</sup>
  - (4) Article 2 of the SCM Agreement, because the USDOC failed to make a proper determination on the basis of positive evidence that the alleged provision of input goods for less than adequate remuneration was specific to an enterprise or industry or group of enterprises or industries;<sup>6</sup>
  - (5) Article 1.1(b) and Article 14(d) of the SCM Agreement, because the USDOC improperly found that the alleged provision of goods for less than adequate remuneration conferred a benefit upon the recipient, and improperly calculated the amount of any benefit allegedly conferred, including, *inter alia*, its erroneous findings that prevailing market conditions in China were "distorted" as the basis for rejecting actual transaction prices in China as benchmarks.<sup>7</sup>
- (b) In connection with the alleged provision of land and land-use rights for less than adequate remuneration:
- (1) Article 2 of the SCM Agreement, because the USDOC failed to make a proper determination on the basis of positive evidence that the alleged subsidy was specific to an enterprise or industry or to a group of enterprises or industries.<sup>8</sup>
- (c) In connection with export restraints allegedly maintained by China:<sup>9</sup>
- (1) Articles 11.1, 11.2, and 11.3 of the SCM Agreement, because the USDOC initiated countervailing duty investigations into these allegations; and
  - (2) Article 1.1(a)(1) of the SCM Agreement, because the USDOC improperly determined that export restraints provided a "financial contribution" within the meaning of that provision.

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The claim also arises in respect of the preliminary determinations by the USDOC to the same effect in CSP, USWT, and SSI.

<sup>5</sup> This claim arises in respect of the investigations identified in footnote 4 above.

<sup>6</sup> This claim arises in respect of the investigations identified in footnote 4 above.

<sup>7</sup> This claim arises in respect of the investigations noted in footnote 4 above. In none of the investigations at issue did the USDOC purport to rely upon Article 15(b) of the *Protocol of Accession* as the basis for rejecting actual transaction prices in China as benchmarks. To the extent that the United States claims otherwise, China considers that the USDOC acted inconsistently with Article 15(b) of the *Protocol of Accession* by failing to make a proper determination of "special difficulties" as the basis for rejecting actual transaction prices in China as benchmarks.

<sup>8</sup> This claim arises in respect of the determinations by the USDOC that producers of subject merchandise received land and land-use rights for less than adequate remuneration, in the following investigations: LTP, CA, SLP, OCTG, SWS, SCASP, PG, AE.

<sup>9</sup> These claims arise in respect of the determinations by the USDOC that export restraints allegedly maintained by the Government of China constitute a countervailable subsidy, in the following investigations: MCB, SCASP.

- (d) In connection with all of the identified countervailing duty investigations in which the USDOC has issued a preliminary or final countervailing duty determination:
  - (1) Article 12.7 of the SCM Agreement, because the USDOC resorted to facts available, and used facts available, including so-called "adverse" facts available, in manners that were inconsistent with that provision.<sup>10</sup>

## **2. "As Such" Claims**

China considers that the "rebuttable presumption" established and applied by the USDOC in respect of whether SOEs can be classified as "public bodies" is, as such, inconsistent with Articles 1.1, 10, and 32.1 of the SCM Agreement, and Article VI of the GATT 1994.

For these reasons, China considers that the measures specified above nullify and impair benefits accruing to China under the GATT 1994, the SCM Agreement, and the Protocol of Accession.

### Request for the Establishment of a Panel

Accordingly, China requests pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU, and Article 30 of the Agreement on Subsidies and Countervailing Measures, that the DSB establish a panel with the standard terms of reference as set out in Article 7.1 of the DSU. China asks that this request be placed on the agenda of the meeting of the DSB scheduled for 31 August 2012.

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<sup>10</sup> This claim arises in respect of each instance in which the USDOC used facts available, including "adverse" facts available, to support its findings of financial contribution, specificity, and benefit in the investigations and determinations identified in Appendix 1.

## **Appendix 1**

### **Investigation C-570-921 (" Thermal Paper" )**

- *Lightweight Thermal Paper From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 73 Federal Register 57323 (2 October 2008).
- *Lightweight Thermal Paper From the People's Republic of China*: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 Federal Register 70958 (24 November 2008).

### **Investigation C-570-931 ("Pressure Pipe" )**

- *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 74 Federal Register 4936 (28 January 2009).
- *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China*: Countervailing Duty Order, 74 Federal Register 11712 (19 March 2009).

### **Investigation C-570-936 (" Line Pipe" )**

- *Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 73 Federal Register 70961 (24 November 2008).
- *Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China*: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 74 Federal Register 4136 (23 January 2009).

### **Investigation C-570-938 ("Citric Acid" )**

- *Citric Acid and Certain Citrate Salts From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 74 Federal Register 16836 (13 April 2009).
- *Citric Acid and Certain Citrate Salts From the People's Republic of China*: Notice of Countervailing Duty Order, 74 Federal Register 25705 (29 May 2009).

### **Investigation C-570-940 ("Lawn Groomers" )**

- *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 74 Federal Register 29180 (19 June 2009).
- *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China*: Countervailing Duty Order, 74 Federal Register 38399 (3 August 2009).

### **Investigation C-570-942 ("Kitchen Shelving" )**

- *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 74 Federal Register 37012 (27 July 2009).

- *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China*: Countervailing Duty Order, 74 Federal Register 46973 (14 September 2009).

**Investigation C-570-944 ("OCTG" )**

- *Certain Oil Country Tubular Goods from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 Federal Register 64045 (7 December 2009).
- *Certain Oil Country Tubular Goods from the People's Republic of China*: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 Federal Register 3203 (20 January 2010).

**Investigation C-570-946 ("Wire Strand" )**

- *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 75 Federal Register 28557 (21 May 2010).
- *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China*: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 75 Federal Register 38977 (7 July 2010).

**Investigation C-570-948 ("Steel Grating" )**

- *Certain Steel Grating from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 75 Federal Register 32362 (8 June 2010).
- *Certain Steel Grating from the People's Republic of China*: Countervailing Duty Order, 75 Federal Register 43144 (23 July 2010).

**Investigation C-570-950 ("Wire Decking" )**

- *Wire Decking from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 75 Federal Register 32902 (10 June 2010).<sup>11</sup>

**Investigation C-570-955 ("Magnesia Bricks" )**

- *Certain Magnesia Carbon Bricks From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 75 Federal Register 45472 (2 August 2010).
- *Certain Magnesia Carbon Bricks from the People's Republic of China*: Countervailing Duty Order, 75 Federal Register 57442 (21 September 2010).

**Investigation C-570-957 ("Seamless Pipe" )**

- *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China*: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 Federal Register 57444 (21 September 2010).

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<sup>11</sup> The US International Trade Commission issued a negative final injury determination in the Wire Decking investigation. The investigation therefore did not result in the imposition of a countervailing duty order. However, the determination of the US International Trade Commission has been appealed to the US Court of International Trade.

- *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China*: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 Federal Register 69050 (10 November 2010).

#### **Investigation C-570-959 ("Print Graphics" )**

- *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 75 Federal Register 59212 (27 September 2010).
- *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China*: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 Federal Register 70201 (17 November 2010).

#### **Investigation C-570-966 ("Drill Pipe" )**

- *Drill Pipe From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 Federal Register 1971 (11 January 2011).
- *Drill Pipe From the People's Republic of China*: Countervailing Duty Order, 76 Federal Register 11758 (3 March 2011).

#### **Investigation C-570-968 ("Aluminum Extrusions" )**

- *Aluminum Extrusions From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 76 Federal Register 18521 (4 April 2011).
- *Aluminum Extrusions From the People's Republic of China*: Countervailing Duty Order, 76 Federal Register 30653 (26 May 2011).

#### **Investigation C-570-971 ("Wood Flooring" )**

- *Multilayered Wood Flooring From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 76 Federal Register 64313 (18 October 2011).
- *Multilayered Wood Flooring From the People's Republic of China*: Countervailing Duty Order, 76 Federal Register 76693 (8 December 2011).

#### **Investigation C-570-974 ("Steel Wheels" )**

- *Certain Steel Wheels From the People's Republic of China*: Initiation of Countervailing Duty Investigation, 76 Federal Register 23302 (26 April 2011).
- *Certain Steel Wheels From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 Federal Register 17017 (23 March 2012).<sup>12</sup>

#### **Investigation C-570-976 ("Steel Wire" )**

- *Galvanized Steel Wire From the People's Republic of China*: Initiation of Countervailing Duty Investigation, 76 Federal Register 23564 (27 April 2011).

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<sup>12</sup> On 17 April 2012, the US International Trade Commission issued a negative final injury determination in the Steel Wheels investigation.

- *Galvanized Steel Wire From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 77 Federal Register 17418 (26 March 2012).<sup>13</sup>

**Investigation C-570-978 ("Steel Cylinders" )**

- *High Pressure Steel Cylinders From the People's Republic of China*: Initiation of Countervailing Duty Investigation, 76 Federal Register 33239 (8 June 2011).
- *High Pressure Steel Cylinders From the People's Republic of China*: Final Affirmative Countervailing Duty Determination, 77 Federal Register 26738 (7 May 2012).
- *High Pressure Steel Cylinders From the People's Republic of China*: Countervailing Duty Order, 77 Federal Register 37384 (21 June 2012).

**Investigation C-570-980 ("Solar Panels" )**

- *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*: Initiation of Countervailing Duty Investigation, 76 Federal Register 70966 (16 November 2011).
- *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*: Preliminary Affirmative Countervailing Duty Determination, 77 Federal Register 17439 (26 March 2012).

**Investigation C-570-982 ("Wind Towers" )**

- *Utility Scale Wind Towers From the People's Republic of China*: Initiation of Countervailing Duty Investigation, 76 Federal Register 3447 (24 January 2012).
- *Utility Scale Wind Towers From the People's Republic of China*: Preliminary Affirmative Countervailing Duty Determination, 77 Federal Register 33422 (6 June 2012).

**Investigation C-570-984 ("Steel Sinks" )**

- *Drawn Stainless Steel Sinks From the People's Republic of China*: Initiation of Countervailing Duty Investigation, 77 Federal Register 18211 (27 March 2012).
- *Drawn Stainless Steel Sinks From the People's Republic of China*: Preliminary Affirmative Countervailing Duty Determination, 77 Federal Register 46717 (6 August 2012).

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For the avoidance of doubt, the measures include any modifications or amendments to the measures identified above, even if those modifications or amendments are not specifically listed.

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<sup>13</sup> On 23 April 2012, the US International Trade Commission issued a negative final injury determination in the Steel Wire investigation.



## **Appendix 2**

<b>OFFICIAL NAME</b>	<b>SHORT FORM</b>	<b>ACRONYM</b>
Lightweight Thermal Paper from the People's Republic of China	Thermal Paper	LTP
Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China	Pressure Pipe	SPP
Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China	Line Pipe	SLP
Citric Acid and Certain Citrate Salts From the People's Republic of China	Citric Acid	CA
Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China	Lawn Groomers	TBLG
Certain Kitchen Appliance Shelving and Racks From the People's Republic of China	Kitchen Shelving	KASR
Certain Oil Country Tubular Goods from the People's Republic of China	OCTG	OCTG
Prestressed Concrete Steel Wire Strand From the People's Republic of China	Wire Strand	SWS
Certain Steel Grating From the People's Republic of China	Steel Grating	SG
Wire Decking from the People's Republic of China	Wire Decking	WD
Certain Magnesite Carbon Bricks From the People's Republic of China	Magnesite Bricks	MCB
Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China	Seamless Pipe	SCASP
Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China	Print Graphics	PG
Drill Pipe From the People's Republic of China	Drill Pipe	DP
Aluminum Extrusions From the People's Republic of China	Aluminum Extrusions	AE
Multilayered Wood Flooring From the People's Republic of China	Wood Flooring	MWF
Certain Steel Wheels From the People's Republic of China	Steel Wheels	SWH
Galvanized Steel Wire From the People's Republic of China	Steel Wire	GSW
High Pressure Steel Cylinders From the People's Republic of China	Steel Cylinders	SCY
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China	Solar Panels	CSP
Utility Scale Wind Towers From the People's Republic of China	Wind Towers	USWT
Drawn Stainless Steel Sinks From the People's Republic of China	Steel Sinks	SSI