

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

Request for the Establishment of a Panel by the United States

The following communication, dated 11 February 2011, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On September 15, 2010, the United States Government requested consultations with China pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"), and Article 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").¹ The United States and China held such consultations on November 1, 2010. Unfortunately these consultations did not resolve the dispute.

The United States considers that certain measures of the Government of the People's Republic of China ("China") are inconsistent with China's commitments and obligations under the GATT 1994, the AD Agreement, and the SCM Agreement. The measures impose countervailing duties and anti-dumping duties on grain oriented flat-rolled electrical steel ("GOES") from the United States, and are set forth in Ministry of Commerce of the People's Republic of China ("MOFCOM") Notice No. 21 [2010], including its annexes.

These measures appear to be inconsistent with the following provisions of the AD Agreement, SCM Agreement, and GATT 1994:

Initiation of the Investigation

1. Articles 11.2 and 11.3 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, or specificity for several of the alleged subsidy programs; and
 - (b) There was insufficient evidence in the application to justify the initiation of an investigation for several of the alleged subsidy programs.

¹ WT/DS414/1.

Subsidy Rate Determinations

2. Article 12.7 of the SCM Agreement, because China improperly made its subsidy rate determinations based on the facts available. In particular, China was not entitled to reject necessary information submitted by respondent producers. The respondent producers submitted the necessary information in a reasonable period of time, and did not significantly impede the investigation. In addition, China applied facts available in a punitive manner, and disregarded its own findings in doing so.

3. Article 12.8 of the SCM Agreement, because China failed to disclose the essential facts underlying its final determination with regard to the subsidy rates, thus impairing the respondents' ability to defend their interests.

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 in making its preliminary and final determinations, including with respect to its use of facts available.

All Others Subsidy Rate Determination

5. Article 12.7 of the SCM Agreement, because China improperly applied facts available in determining the duty rate applicable to exporters that were not known at the time of the investigation, including potential "new shippers" and exporters that were not given notice of the information required by the investigating authority. In addition, China applied facts available in a punitive manner, and disregarded its own findings in doing so.

6. Article 12.8 of the SCM Agreement, because China failed to disclose the essential facts underlying its determination regarding the all others subsidy rate, thus impairing the interested parties' ability to defend their interests.

7. 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 in making its preliminary and final determinations. China also did not explain why the all others subsidy rate increased from the preliminary determination to the final determination.

Antidumping Margin Determinations

8. Articles 6.9 and 12.2.2 of the AD Agreement, because China failed to disclose the essential facts underlying its determination and make available all relevant information on the matters of fact and law and reasons which led to the imposition of the final measures, thus impairing the respondents' ability to defend their interests.

All Others Dumping Determination

9. Article 6.8 and paragraph 1 of Annex II of the AD Agreement, because China improperly applied facts available in determining the duty rate applicable to exporters that were not known at the time of the investigation, including potential "new shippers" and exporters that were not given notice of the information required by the investigating authority.

10. Article 6.9 of the AD Agreement, because China failed to disclose the "essential facts" underlying its determination regarding the all others dumping rate, thus impairing the respondents' ability to defend their interests.

11. Article 12.2 of the AD Agreement, because China failed to provide in sufficient detail the findings and conclusions it reached on all issues of fact and law it considered in making its preliminary or final determination regarding the all others dumping rate. China also did not explain why the all others dumping rate increased from the preliminary determination to the final determination.

12. Article 12.2.2 of the AD Agreement because China failed to make available all relevant information on the matters of fact and law and reasons which led to the imposition of the final measure.

Explanation of Final Countervailing Duty Determination

13. 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 led to the imposition of the final measure.

Confidential Information

14. Articles 6.4 and 6.5.1 of the AD Agreement, and 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. China's treatment of confidential information did not allow the interested parties to obtain a reasonable understanding of the substance of the confidential information prior to the preliminary and final determinations, such that they could prepare presentations on the basis of this information. China did not give any indication that the information could not be summarized and did not provide the reasons why summarization was not practicable.

Injury Determination: Price Effects Analysis

15. Article VI of the GATT 1994 and Articles 3.1, 3.2, 6.9, and 12.2.2 of the AD Agreement, and Articles 12.8, 15.1, 15.2, and 22.5 of the SCM Agreement, because in its analysis of the price effects of imports under investigation, China did not discharge its obligations to determine whether there had been significant price undercutting by the allegedly dumped imports, whether the effect of such imports was to depress prices to a significant degree, or prevent price increases which would otherwise have occurred to a significant degree. In particular:

- (a) China never disclosed several pieces of information critical to its price effects analysis;
- (b) China failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material and failed to provide the reasons for the acceptance or rejection of the relevant argument or evidence by the exporters or importers; and
- (c) China's findings that the dumped and subsidized imports had significant price effects failed to reflect an objective examination of the evidence in the record and/or are unsupported by positive evidence.

Injury Determination: Causation

16. Articles 3.1, 3.5, 6.9, and 12.2.2 of the AD Agreement, and Articles 12.8, 15.1, 15.5, and 22.5 of the SCM Agreement, in particular:

- (a) China's causal link analysis relied on findings that did not reflect an objective examination of the record and/or are unsupported by positive evidence. China failed to examine all relevant evidence;
- (b) China never disclosed several pieces of information critical to its causation analysis; and
- (c) China failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material.

In view of the claims set forth above, the United States considers that China has also acted inconsistently with Article VI of the GATT 1994, Article 1 of the AD Agreement, and Article 10 of the SCM Agreement, which only permit anti-dumping or countervailing duty measures to be applied under the circumstances provided for in Article VI of the GATT 1994 and conducted in accordance with the AD Agreement and the SCM Agreement. These measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

Therefore, the United States respectfully requests, pursuant to Article 6 of the DSU, Article 17.4 of the AD Agreement, and Article 30 of the SCM Agreement, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.
