WORLD TRADE ORGANIZATION

WT/DS414/16

14 February 2014

(14-0975)

Page: 1/2

Original: English

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

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES

Request for the Establishment of a Panel

The following communication, dated 13 February 2014, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

_____

On 16 November 2012, the Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States ("China – GOES") (DS414).[1] The DSB found that the Government of the People's Republic of China ("China") imposed antidumping and countervailing duties on US exports of grain oriented flat-rolled electrical steel ("GOES") in a manner that breached China's obligations under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement") and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). The DSB recommended that China bring its measures into conformity with its obligations under these Agreements.

On 30 November 2012, China announced its intention to implement the DSB's recommendations and rulings in this dispute and stated that it would need a reasonable period of time in which to do so.[2] On 3 May 2013, the arbitrator appointed under Article 21.3(c) of the DSU issued an Award providing China eight months and 15 days to implement the DSB's recommendations and rulings, expiring on 31 July 2013.[3]

On 31 July 2013, China issued a re-determination in relation to the duties at issue in this dispute, as set forth in China's Ministry of Commerce (MOFCOM) Public Notice [2013] No. 51, including its annexes. This re-determination continues the imposition of antidumping and countervailing duties on imports of GOES from the United States.

On 21 August 2013, the United States and China informed the DSB that the two parties had concluded *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding* ("Agreed Procedures").[4] Paragraph 1 of the Agreed Procedures provides that, "[s]hould the United States consider that the situation described in Article 21.5 of the DSU exists, the United States will request that China enter into consultations with the United States."[5]

On 13 January 2014, the United States requested consultations with China pursuant to Paragraph 1 of the Agreed Procedures.[6] The consultations took place on 24 January 2014, but did not resolve US concerns.

[1] WT/DSB/M/324.
[2] WT/DSB/M/326.
[3] WT/DS414/12.
[4] WT/DS414/14.
[5] Original footnote 1 following this sentence reads: "The Parties agree that under Article 21.5 of the DSU, consultations are not obligatory."
[6] WT/DS414/15.

The United States considers that China has failed to bring its measures into conformity with the covered agreements. Specifically, the United States considers that China's measures continuing to impose antidumping and countervailing duties on GOES from the United States, as set forth in MOFCOM Public Notice [2013] No. 51, including its annexes, and in MOFCOM Public Notice No. 21 [2010], including its annexes, are not consistent with the following provisions of the covered agreements:

1. Articles 3.1 and 3.2 of the AD Agreement and Articles 15.1 and 15.2 of the SCM Agreement, because China failed to establish that the effect of the dumped and subsidized imports was to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree, on the basis of an objective examination of the record and positive evidence.

2. Articles 3.1 and 3.4 of the AD Agreement, and Articles 15.1 and 15.4 of the SCM Agreement, because China's findings that the dumped and subsidized imports negatively impacted the domestic industry were not based on an objective examination of the record and positive evidence, including an evaluation of all relevant economic factors and indices having a bearing on the state of the industry.

3. Articles 3.1 and 3.5 of the AD Agreement, and Articles 15.1 and 15.5 of the SCM Agreement, because: (a) China's analysis of the alleged causal relationship between subject imports and injury to the domestic industry was not based on an objective examination of the record and positive evidence, including an examination of all relevant evidence before the authorities, or an examination of any known factors other than dumped and subsidized imports which at the same time were injuring the domestic industry; and (b) China failed to meet the requirement that injuries caused by other factors must not be attributed to the dumped and subsidized imports.

4. Article 6.9 of the AD Agreement and Article 12.8 of the SCM Agreement, because China failed to disclose the "essential facts" under consideration which form the basis for its re-determination.

5. Articles 12.2 and 12.2.2 of the AD Agreement, and Articles 22.3 and 22.5 of the SCM Agreement, because China failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material, and the reasons for the acceptance or rejection of relevant arguments or claims.

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

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

8. Article VI of the GATT 1994 as a consequence of the breaches of the AD and SCM Agreements described above.

As "there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" between the United States and China within the meaning of Article 21.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), the United States seeks recourse to Article 21.5 of the DSU, including wherever possible resort to the original panel.

The United States notes that China, pursuant to Paragraph 2 of the Agreed Procedures, has agreed to accept the establishment of the panel at the first DSB meeting at which a request for the establishment of an Article 21.5 panel appears on the agenda.

_____