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**UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN PIPE  
AND TUBE PRODUCTS (TURKEY)**

**NOTIFICATION OF AN APPEAL BY THE UNITED STATES 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 25 January 2019, from the delegation of the United States, is being circulated to Members.

1. Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the report of the Panel in *United States – Countervailing Duty Measures on Certain Pipe and Tube Products from Turkey* (WT/DS523/R & WT/DS523/R/Add.1) and certain legal interpretations developed by the Panel.

2. The United States seeks review by the Appellate Body of the Panel's finding that Turkey's challenges to an alleged practice related to the rejection of in-country prices in the assessment of benefit and to alleged practices related to the cumulation of subsidized and non-subsidized imports in the assessment of injury are within the Panel's terms of reference.<sup>1</sup> This finding is in error and is based on erroneous findings on issues of law and legal interpretations. The Panel erred in its application of DSU Articles 4.4, 6.2, and 7.1 by finding that these measures and claims – which were not identified in Turkey's consultations request – fell within the Panel's terms of reference. The United States respectfully requests that the Appellate Body reverse the Panel's findings.

3. The United States seeks review of the Panel's finding that the United States acted inconsistently with Article 1.1(a)(1) of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") in the Oil Country Tubular Goods ("OCTG"), Welded Line Pipe ("WLP"), and Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes ("HWRP") countervailing duty investigations, and the Circular Welded Carbon Steel Pipes and Tubes ("CWP") administrative review through its public body determinations regarding Erdemir and Isdemir.<sup>2</sup> This finding is in error and based on erroneous findings on issues of law and legal interpretation. The Panel erred in its interpretation and application of Article 1.1(a)(1) of the SCM Agreement because the Panel required that a public body finding be supported by evidence that the government actually exercised control over the conduct of an entity,<sup>3</sup> and when it determined that an entity's engagement in commercial behavior is necessarily relevant to an investigating authority's analysis of a public body.<sup>4</sup> The Panel further erred in its application of Article 1.1(a)(1) when it reviewed each piece of record evidence in isolation, and failed to consider whether the totality of the evidence could support the United States Department of Commerce's ("USDOC") determination that Erdemir and Isdemir are public bodies.<sup>5</sup> The Panel also erred in its assessment of this claim by making arguments for Turkey that Turkey advanced only in its separate claim regarding OYAK. In addition, in assessing the evidence

<sup>1</sup> Panel Report, para. 8.1.a-b.

<sup>2</sup> Panel Report, paras. 7.50, 7.66, 7.68, 8.2.a.

<sup>3</sup> Panel Report, paras. 7.42, 7.49-7.50.

<sup>4</sup> Panel Report, paras. 7.51-7.62.

<sup>5</sup> Panel Report, paras. 7.42-7.50.

regarding OYAK, the Panel erred because its assessment failed to reflect the approach taken by USDOC of reviewing the evidence in its totality.<sup>6</sup> The Panel conclusions under Article 1.1(a)(1) were thus based on erroneous findings, and the United States respectfully requests that the Appellate Body reverse the Panel's findings that the United States acted inconsistently with Article 1.1(a)(1).

4. The United States seeks review of the Panel's finding that the United States acted inconsistently with Articles 2.1(c) and 2.4 of the SCM Agreement relating to the OCTG, WLP, and HWRP countervailing duty investigations and the CWP administrative review in evaluating the existence of a subsidy program and finding specificity.<sup>7</sup> This finding is in error and is based on erroneous findings on issues of law and legal interpretations. The Panel erred in its interpretation and application of Article 2.1(c) by interpreting the term "programme" in a manner that is inconsistent with the ordinary meaning of the term in Article 2.1 in its context.<sup>8</sup> The Panel also erred in its application of Article 2.1(c) when it viewed the record evidence in isolation, and failed to consider whether the totality of the evidence, taken together, could support the USDOC's determination.<sup>9</sup> Further, because the Panel's finding under Article 2.4 is dependent on its analysis under Article 2.1(c), its finding under Article 2.4 must also be reversed.<sup>10</sup> The United States respectfully requests that the Appellate Body reverse the Panel's findings.

5. The United States seeks review of the Panel's finding that the United States acted inconsistently with Article 12.7 of the SCM Agreement in the OCTG, WLP, and HWRP countervailing duty investigations in selecting facts available.<sup>11</sup> These findings are in error and are based on erroneous findings on issues of law and legal interpretations. The Panel erred in applying Article 12.7 when it found that USDOC had not engaged in a "process of reasoning and evaluation" in selecting facts available during these proceedings. The Panel also erred by making findings regarding USDOC's application of facts available in the WLP investigation with respect to the Provision of Hot-Rolled Steel for Less Than Adequate Remuneration program, as Turkey provided no argumentation that would support such findings. The United States respectfully requests that the Appellate Body reverse the Panel's findings.

6. The United States seeks review of the Panel's findings that the United States acted inconsistently with Article 15.3 of the SCM Agreement by cumulatively assessing the effects of subsidized imports with those of non-subsidized imports through a "practice" in original investigations<sup>12</sup> and through its injury determinations in the OCTG, WLP, and HWRP countervailing duty investigations.<sup>13</sup> These findings are in error and are based on erroneous findings on issues of law and legal interpretations. The Panel erred in its application of Article 15.3 because it found that the USITC had a "practice" of cumulating the effects of subsidized imports with the effects of dumped, non-subsidized imports,<sup>14</sup> and therefore erred in finding the alleged "practice" to be "as such" inconsistent with Article 15.3.<sup>15</sup> The Panel also erred in its interpretation of Article 15.3 because it found that the cumulation of subsidized imports with dumped, non-subsidized imports is inconsistent with Article 15.3.<sup>16</sup> The Panel erred in its application of Article 15.3 because its findings were based on the erroneous interpretation of Article 15.3.<sup>17</sup> The United States respectfully requests that the Appellate Body reverse the Panel's findings.

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<sup>6</sup> Panel Report, paras. 7.37-7.40, 7.67.

<sup>7</sup> Panel Report, paras. 7.161-7.162, 7.182, 8.2.c.i.

<sup>8</sup> Panel Report, paras. 7.158-7.159.

<sup>9</sup> Panel Report, paras. 7.154-7.161.

<sup>10</sup> Panel Report, paras. 7.162, 7.182.

<sup>11</sup> Panel Report, para. 8.2.d.ii-iv.

<sup>12</sup> Panel Report, para. 8.2.e.ii.

<sup>13</sup> Panel Report, para. 8.2.e.i.

<sup>14</sup> In the event the Appellate Body considers the Panel's assessment of whether the "practice" exists to be an error in the Panel's factual assessment, in the alternative, the United States appeals this finding under DSU Article 11.

<sup>15</sup> Panel Report, para. 7.314.

<sup>16</sup> Panel Report, paras. 7.281-7.295.

<sup>17</sup> Panel Report, para. 7.316.