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Page: 1/3

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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY JAPAN

The following communication, dated 11 April 2013, from the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 20 December 2012, Japan requested consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 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"), and Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement") with regard to China's measures imposing anti-dumping duties on high-performance stainless steel seamless tubes ("HP-SSST") from Japan.¹ These measures are set forth in Ministry of Commerce of China ("MOFCOM") Notice No. 21 [2012] (the "Preliminary Determination notice") and Notice No. 72 [2012] (the "Final Determination notice"), including any and all annexes and any amendments thereof.

Japan held consultations with China on 31 January and 1 February 2013. Unfortunately these consultations did not resolve the dispute.

Japan considers that the measures at issue are inconsistent with, at least, China's obligations under the following provisions of the Anti-Dumping Agreement:

1. Articles 3.1, 3.2, 3.4, and 3.5 because China's injury determination was not based on positive evidence and did not involve an objective examination of the volume of the dumped imports under investigation, the effect of those imports on prices in the domestic market for like products, and the consequent impact of those imports on domestic producers of such products. Specifically:
 - (a) In its price effects analysis, China failed to conduct proper analyses with respect to the three different grades of HP-SSST products under investigation and the HP-SSST products as a whole, and China improperly concluded that the imports under investigation had an overall significant effect on the prices of like domestic products. Accordingly, China acted inconsistently with Articles 3.1 and 3.2 of the Anti-Dumping Agreement.
 - (b) China's analysis of the impact of the dumped imports on the domestic industry:
 - (i) failed to make an objective examination, based on positive evidence, of the impact of subject imports on the domestic industry based on the volume of such imports and their effect on prices; (ii) failed to evaluate the magnitude of the margin of dumping; and (iii) failed to objectively determine the relative importance and weight to be attached to relevant economic factors and indices, and improperly disregarded the majority of those factors and indices indicating that the

¹ WT/DS454/1, circulated 7 January 2013.

domestic industry did not suffer material injury. Accordingly, China acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement.

- (c) China's demonstration of the alleged causal relationship between the imports under investigation and the alleged injury to the domestic industry was not based on an objective examination of all relevant evidence before the authorities. In particular, China determined that the allegedly dumped imports are causing injury despite an absence of a significant increase in the volume of dumped imports, and based on its flawed price effects and impact analyses. Accordingly, China acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement.
 - (d) China failed to conduct an objective examination, based on positive evidence, of factors other than the imports under investigation which are at the same time injuring the domestic industry, and therefore improperly attributed the injury caused by those factors to the imports under investigation. Accordingly, China acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement.
2. Article 6.5 because China treated information supplied by the applicants as confidential without good cause shown.
3. Article 6.5.1 because China failed to require the applicants to furnish non-confidential summaries of information that was treated as confidential or explanations as to why furnishing such summaries was not possible. Furthermore, where such summaries were provided, they were not in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.
4. Article 6.8 and Paragraph 1 of Annex II because China improperly relied on facts available to calculate the dumping margin for all Japanese companies other than Sumitomo Metal Industries, Ltd. ("SMI") and Kobe Special Tube Co., Ltd. ("Kobe").
5. Article 6.9 because China failed to disclose adequately to all interested parties the essential facts underlying:
 - (a) the determination of the existence of dumping and the calculation of dumping margins for SMI and Kobe, including relevant data;
 - (b) the determination and the calculation of the dumping margins for all Japanese companies other than SMI and Kobe; and
 - (c) China's determinations of injury and causation, including the import prices and domestic prices used therein.
6. Article 7.4 because China applied provisional measures on the imports under investigation for a period exceeding four months.
7. Article 12.2 because China's Final Determination notice fails to set forth, or China does not otherwise make available through a separate report, in sufficient detail China's findings and conclusions reached on all material issues of fact and law with respect to:
 - (a) the determination and the calculation of the dumping margins for all Japanese companies other than SMI and Kobe; and
 - (b) China's determinations of injury and causation, including the import prices and domestic prices used therein.
8. Article 12.2.2 because China's Final Determination notice does not contain, or China does not otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons with respect to:
 - (a) the determination and the calculation of the dumping margins for all Japanese companies other than SMI and Kobe; and

- (b) China's determinations of injury and causation, including the import prices and domestic prices used therein.

As a consequence of the apparent breaches of the Anti-Dumping Agreement described above, China's anti-dumping measures on HP-SSST from Japan are also inconsistent with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

China's measures, therefore, nullify and impair benefits accruing to Japan under the Anti-Dumping Agreement and the GATT 1994.

Accordingly, Japan respectfully requests that, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the Anti-Dumping Agreement, 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.

Japan asks that this request be placed on the Agenda for the meeting of the Dispute Settlement Body to be held on 24 April 2013.
