



28 August 2014

(14-4945)

Page: 1/7

Original: English

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

**NOTIFICATION OF AN APPEAL BY CHINA
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 notification, dated 22 August 2014, from the Delegation of the People's Republic of China, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review* (WT/AB/WP/6) ("Working Procedures"), China hereby notifies the Dispute Settlement Body of its decision to appeal certain issues of law and legal interpretation in the Panel Report in *United States – Countervailing Duty Measures on Certain Products From China* (WT/DS437) ("Panel Report").

2. The measures at issue are certain preliminary and final countervailing duty measures identified in Appendix 1. These measures were issued by the United States Department of Commerce ("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.

3. The issues that China raises in this appeal relate to the Panel's findings and conclusions in respect of the consistency of the challenged measures with various provisions of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), as set forth herein.

4. Pursuant to Rules 20(1) and 21(1) of the Working Procedures, China files this Notice of Appeal together with its Appellant's Submission with the Appellate Body Secretariat.

5. Pursuant to Rule 20(2)(d)(iii) of the Working Procedures, this Notice of Appeal provides an indicative list of the paragraphs of the Panel Report containing the alleged errors of law and legal interpretation by the Panel in its report, without prejudice to China's ability to rely on other paragraphs of the Panel Report in its appeal.

I. REVIEW OF THE PANEL'S FINDINGS UNDER ARTICLE 14(D) OF THE SCM AGREEMENT

6. China seeks review by the Appellate Body of the Panel's interpretation and application of Article 14(d) and Article 1(b) of the SCM Agreement as they relate to the USDOC's decision in the determinations at issue to reject in-country private prices in China as benchmarks on the grounds that such prices were distorted. The Panel's errors of law and legal interpretation include:

- The Panel erred in concluding that the legal standard for determining what constitutes a "government" provider for purposes of the financial contribution inquiry under Article 1.1(a)(1) of the SCM Agreement does not also apply for purposes of determining what constitutes a "government" provider for purposes of a distortion inquiry under Article 14(d) of the SCM Agreement. As a consequence, the Panel erred in concluding that China's benefit-related claims failed on the grounds that they rested on an erroneous interpretation of Article 14(d) of the SCM Agreement.¹
- The Panel erred in applying the Appellate Body's reasoning in *US – Anti-Dumping and Countervailing Measures (China)* to uphold the USDOC's rejection of private prices as potential benchmarks in the cases under challenge on the grounds that such prices were distorted.²
- The Panel failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case, as required by Article 11 of the DSU, in concluding that China failed to establish the factual premise for its claims in respect of four of the USDOC determinations under challenge: OCTG, Solar Panels, Pressure Pipe and Line Pipe.³

7. For these reasons, China requests that the Appellate Body reverse the Panel's finding in paragraph 7.195 of the Panel Report upholding the USDOC's rejection of private prices as potential benchmarks in the cases under challenge on the grounds that such prices were distorted, as well as the Panel's finding in 7.196 of the Panel Report that China's claims "rest on an erroneous interpretation of Article 14(d)".

8. China requests that the Appellate Body reverse the Panel's finding in paragraphs 7.188 and 7.196 of the Panel Report that China did not sufficiently substantiate the factual premises of its "as applied" claims in respect of four of the USDOC determinations under challenge: OCTG, Solar Panels, Pressure Pipe and Line Pipe.

9. Accordingly, China requests that the Appellate Body reverse the Panel's finding in paragraph 7.197 and the Panel's ultimate finding in paragraph 8.1(iv) of the Panel Report that China failed to establish that the USDOC acted inconsistently with the obligations of the United States under Article 14(d) or Article 1.1(b) of the SCM Agreement by rejecting in-country private prices as benchmarks in respect of four of the USDOC determinations under challenge: OCTG, Solar Panels, Pressure Pipe and Line Pipe.

9. China requests that the Appellate Body complete the legal analysis to find, instead, that the USDOC acted inconsistently with the obligations of the United States under Article 14(d) and Article 1.1(b) of the SCM Agreement by rejecting in-country private prices in China in respect of four of the USDOC determinations under challenge: OCTG, Solar Panels, Pressure Pipe and Line Pipe.

II. REVIEW OF THE PANEL'S FINDINGS UNDER ARTICLE 2.1 OF THE SCM AGREEMENT

10. China seeks review by the Appellate Body of the Panel's interpretation and application of Article 2.1 of the SCM Agreement as it relates to the USDOC input specificity determinations under challenge. In particular, the Panel's errors of law and legal interpretation include:

- The Panel erred in its interpretation and application of Article 2.1 when it found that "the USDOC did not act inconsistently with Article 2.1 by analysing specificity exclusively under Article 2.1(c)".⁴
- The Panel erred in its interpretation and application of the term "subsidy programme" in Article 2.1(c) when it found that "the consistent provision by the SOEs in question of inputs

¹ Panel Report, paras. 7.189-7.196.

² Panel Report, paras. 7.194-7.195.

³ Panel Report, paras. 7.179-7.188, 7.196.

⁴ Panel Report, paras. 7.224-7.231.

for less than adequate remuneration" provided an objective basis for the USDOC to sufficiently identify subsidy programmes for the purposes of the first of the "other factors" under Article 2.1(c) in the relevant specificity determinations.⁵

- The Panel erred in its application of Article 2.1 when it found that "the relevant jurisdiction was at the very least implicitly understood to be China in the challenged investigations", and that China had therefore failed to establish that the USDOC acted inconsistently with Article 2.1 by failing to identify the relevant granting authority.⁶

11. For these reasons, China requests that the Appellate Body reverse the Panel's findings in paragraphs 7.231, 7.243, and 7.249 of the Panel Report in relation to the three aforementioned errors.

12. Accordingly, China requests that the Appellate Body reverse the Panel's finding in paragraph 7.258 and the Panel's ultimate finding in paragraph 8.1(v) of the Panel Report that China had not established that the USDOC acted inconsistently with the obligations of the United States under Article 2.1 of the SCM Agreement by failing to apply the first of the "other factors" under Article 2.1(c) in light of a prior "appearance of non-specificity" resulting from the application of subparagraphs (a) and (b); by failing to identify a "subsidy programme"; or by failing to identify a "granting authority", with respect to 12 countervailing duty investigations, namely Pressure Pipe, Line Pipe, Lawn Groomers, Kitchen Shelving, OCTG, Wire Strand, Seamless Pipe, Print Graphics, Drill Pipe, Aluminum Extrusions, Steel Cylinders and Solar Panels.

13. If the Appellate Body were to reverse any or all of the Panel's findings and conclusions in respect of China's claims under Article 2.1(c), China requests that the Appellate Body complete the legal analysis in respect of those claims to find, instead, that the USDOC acted inconsistently with the obligations of the United States under Article 2.1 of the SCM Agreement in respect of 15 input specificity determinations in Pressure Pipe, Line Pipe, Lawn Groomers, Kitchen Shelving, OCTG, Wire Strand, Seamless Pipe, Print Graphics, Drill Pipe, Aluminum Extrusions, Steel Cylinders and Solar Panels.⁷

III. REVIEW OF THE PANEL'S FINDINGS UNDER ARTICLE 12.7 OF THE SCM AGREEMENT

14. China seeks review by the Appellate Body of the Panel's analysis of China's claims under Article 12.7 of the SCM Agreement.

15. The Panel failed to make an objective assessment of the matter before it as required by Article 11 of the DSU in concluding that China had not established that in 42 challenged instances the USDOC acted inconsistently with the United States' obligations under Article 12.7 by not relying on facts available on the record.⁸ In particular, the Panel failed to apply the proper standard of review by failing to examine, with respect to each challenged "adverse facts available" determination, whether there was a reasoned and adequate explanation, discernible from the published determination itself, providing the factual basis for the USDOC's conclusion.⁹

16. Accordingly, China requests that the Appellate Body reverse the Panel's finding in paragraph 7.325 and the Panel's ultimate finding in paragraph 8.1(vii) of the Panel Report that China had not established that in 42 instances the USDOC acted inconsistently with the United States' obligations under Article 12.7 of the SCM Agreement by not relying on facts available on the record with respect to 13 countervailing duty investigations, namely Pressure Pipe, Line Pipe,

⁵ Panel Report, paras. 7.232-7.243.

⁶ Panel Report, paras. 7.244-7.249.

⁷ Before the Panel, China challenged a single input specificity determination in each investigation except for Drill Pipe, where it challenged two input specificity determinations, and Steel Cylinders, where it challenged three input specificity determinations. The same 15 input specificity determinations are the subject of China's appeal.

⁸ Panel Report, para. 7.325.

⁹ Panel Report, paras. 7.307-7.325.

Citric Acid, Lawn Groomers, OCTG, Wire Strand, Magnesia Bricks, Seamless Pipe, Print Graphics, Drill Pipe, Aluminum Extrusions, Steel Cylinders and Solar Panels.¹⁰

17. China requests that the Appellate Body complete the legal analysis to find, instead, that the USDOC acted inconsistently with the obligations of the United States under Article 12.7 of the SCM Agreement by not relying on facts available on the record in each of the 42 challenged instances in the aforementioned 13 countervailing duty investigations.

IV. CONSEQUENTIAL VIOLATIONS

18. If the Appellate Body reverses the Panel's findings and completes the legal analysis with respect to any of the foregoing claims of error, China further requests that the Appellate Body complete the analysis with respect to China's claims of consequential violations under Articles 10 and 32.1 of the SCM Agreement in respect of which the Panel exercised judicial economy.

¹⁰ Panel Report, para. 8.1(vii).

APPENDIX 1

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-570-955 ("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).
- *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-570-978 ("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).

* * *

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.
