



2 June 2015

(15-2726)

Page: 1/2

Original: English

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

**NOTIFICATION OF AN OTHER APPEAL BY THE PEOPLE'S REPUBLIC OF CHINA  
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES  
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),  
AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 26 May 2015, 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 DSU and Rule 23 of the Working Procedures, China hereby notifies the Dispute Settlement Body of its decision to appeal certain issues of law and legal interpretations developed in the Report of the Panel in *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan* (WT/DS454/R) (Panel Report).
2. Pursuant to Rules 23(1) and 23(3) of the Working Procedures, China is simultaneously filing this Notice of Other Appeal and its Other Appellant Submission with the Appellate Body Secretariat.
3. The measure at issue in this dispute concerns anti-dumping duties imposed on imports of High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from the Japan. The Ministry of Commerce of China (MOFCOM) issued a final determination finding the existence of dumping that caused injury to the domestic industry by means of MOFCOM Notice No. 72 [2012].
4. Pursuant to Rule 23(2)(c)(ii)(C), the present Notice of Other 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 the ability of China to refer to other paragraphs of the Panel Report in the context of its appeal.
5. China seeks review by the Appellate Body of, and requests the Appellate Body to reverse, the following findings and conclusions of the Panel, with respect to the following errors of law and legal interpretation contained in the Panel Report:
  - a. the Panel's findings and conclusions concerning the consistency of MOFCOM's reliance on the market share in the causation analysis with Articles 3.1 and 3.5 of the Anti-Dumping Agreement, as contained *inter alia* in paras. 6.106, 7.181-7.188, 7.205 and 8.1(a)(iii), including that "MOFCOM improperly relied on the market share of subject imports [...] in determining a causal link between subject imports and material injury to the domestic industry, contrary to Articles 3.1 and 3.5 of the Anti-Dumping Agreement", because of the following errors of law and legal interpretation:
    - i. in reaching those findings and conclusions, the Panel acted contrary to Articles 6.2 and 7.1 of the DSU since it reached findings and ruled on a claim that was not within its terms of reference;

- ii. even if assuming that the claim was within the Panel's terms of reference, in reaching those findings and conclusions the Panel erred in considering that Japan in its submissions "referred to the relevance of market share data in the context of price effects" and ruled on a matter that was not before it, contrary to Article 11 of the DSU, or in the alternative, made the case for the complainant and acted in violation of the principles governing the burden of proof, the due process requirements, Paragraph 7 of the Joint Working Procedures and Article 11 of the DSU;
  - iii. the Panel erred in the interpretation and application of Articles 3.1 and 3.5 of the Anti-Dumping Agreement and acted contrary to Article 11 of the DSU when reaching those findings and conclusions, including when finding that MOFCOM's reliance on the market shares is not sufficient to establish that subject imports, through price undercutting, had a relatively big impact on the price of the domestic industry, and a consequent finding of causation consistent with Article 3.5 of the Anti-Dumping Agreement;
- b. the Panel's findings and conclusions concerning the consistency of MOFCOM's non-attribution analysis with Articles 3.1 and 3.5 of the Anti-Dumping Agreement, as contained *inter alia* in paras. 7.200-7.205 and 8.1(a)(iv), including that "MOFCOM failed to ensure that injury caused by the decrease in apparent consumption and the increase in production capacity was not attributed to subject imports, contrary to Articles 3.1 and 3.5 of the Anti-Dumping Agreement", because these are entirely based on the Panel's findings and conclusions contained in paras. 6.106, 7.181-7.188, 7.205 and 8.1(a)(iii) (including the Panel's erroneous rejection of China's reliance on MOFCOM's price correlation finding) that have to be reversed for the reasons set out in subparagraph (a) above;
- c. the Panel's findings and conclusions concerning the consistency of MOFCOM's treatment of confidential information with Article 6.5 of the Anti-Dumping Agreement, as contained *inter alia* in paras. 7.290, 7.297-7.303 and 8.1(b), including that "MOFCOM allowed certain information supplied by the petitioners to remain confidential without objectively assessing "good cause" or scrutinizing the petitioners' showing of "good cause", contrary to Article 6.5 of the Anti-Dumping Agreement", because of the following errors of law and legal interpretation:
- i. the Panel erred in the interpretation and application of Article 6.5 of the Anti-Dumping Agreement when reaching those findings and conclusions;
  - ii. the Panel applied an erroneous standard of review and failed to make an objective assessment of the facts before it and acted contrary to Article 11 of the DSU and Article 17.6(i) of the Anti-Dumping Agreement when reaching those findings and conclusions;
  - iii. the internally inconsistent reasoning as regards the consistency of the measure at issue with Article 6.5 and Article 6.5.1 cannot be reconciled with the Panel's duty to make an objective assessment of the facts under Article 11 of the DSU and the Panel disregarded Paragraph 7 of the Joint Working Procedures when reaching those findings and conclusions.
-