

**CHINA – ANTI-DUMPING AND COUNTERVAILING DUTIES
ON CERTAIN AUTOMOBILES FROM THE UNITED STATES**

Request for the Establishment of a Panel by the United States

The following communication, dated 17 September 2012, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On July 5, 2012, the United States Government requested consultations with China pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") (to the extent that Article 30 incorporates Article XXIII of the GATT 1994), and Article 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement") with respect to China's measures imposing anti-dumping duties and countervailing duties on certain automobiles from the United States.¹ The United States and China held such consultations on August 23, 2012. Unfortunately these consultations were unsuccessful in resolving this dispute.

The United States considers that China's measures imposing anti-dumping and countervailing duties on certain automobiles from the United States, as set forth in Ministry of Commerce of the People's Republic of China ("MOFCOM") Notice No. 20 [2011] and Notice No. 84 [2011], including any and all annexes, are inconsistent with China's obligations under the following provisions of the AD Agreement, SCM Agreement, and GATT 1994:

Initiation of the Investigation: Support for the Application

1. Article 5.4 of the AD Agreement, and Article 11.4 of the SCM Agreement, because:
 - (a) (a)China failed to examine the degree of support for, or opposition to, the application expressed by domestic producers of the like product prior to initiating the antidumping and countervailing duty investigations; and
 - (b) China initiated the investigations when domestic producers supporting the application accounted for less than 25 per cent of total production of the like product produced by the domestic industry.

¹ WT/DS440/1.

All Others Subsidy Rate Determination

2. Article 12.7 of the SCM Agreement, because China improperly based its determinations on the "facts available" in the case of exporters that were not known at the time of the investigation, including exporters that were not given notice of the information required by the investigating authority.

3. Article 12.8 of the SCM Agreement, because China failed to disclose the essential facts under consideration which formed the basis of its determination regarding the all others subsidy rate, thus impairing the interested parties' ability to defend their interests.

4. Article 22.3 of the SCM Agreement, because China failed to provide in sufficient detail the findings and conclusions it reached on all issues of fact and law it considered material in making its preliminary and final determinations.

5. Article 22.5 of the SCM Agreement because China failed to make available all relevant information on the matters of fact and law and reasons which led to the imposition of the final measure.

Antidumping Margin: Disclosure of Data and Calculations

6. Article 6.9 of the AD Agreement, because China failed to disclose the essential facts under consideration which formed the basis of its determination, thus impairing the respondents' ability to defend their interests.

All Others Dumping Determination

7. Article 6.8 and paragraph 1 of Annex II of the AD Agreement, because China improperly applied facts available in determining the duty rate applicable to exporters that were not known at the time of the investigation, including exporters that were not given notice of the information required by the investigating authority.

8. Article 6.9 of the AD Agreement, because China failed to disclose the "essential facts" under consideration which formed the basis of its determination regarding the all others dumping margin, thus impairing the respondents' ability to defend their interests.

9. Article 12.2 of the AD Agreement, because China failed to provide in sufficient detail the findings and conclusions it reached on all issues of fact and law it considered in making its preliminary or final determinations.

10. Article 12.2.2 of the AD Agreement because China failed to make available all relevant information on the matters of fact and law and reasons which led to the imposition of the final measure.

Confidential Information

11. Article 6.5.1 of the AD Agreement, and Article 12.4.1 of the SCM Agreement, because China failed to require the applicant to provide adequate non-confidential summaries of allegedly confidential information. China's treatment of confidential information did not allow the interested parties to obtain a reasonable understanding of the substance of the confidential information prior to the preliminary and final determinations, such that they could prepare presentations on the basis of this information. China did not give any indication that the information could not be summarized and did not provide the reasons why summarization was not practicable.

Injury Determination: Definition of the Domestic Industry

12. Articles 3.1 and 4.1 of the AD Agreement and Articles 15.1 and 16.1 of the SCM Agreement, because China made a determination of injury using an improper definition of the domestic industry and as a result failed to base its determination on positive evidence or conduct an objective examination of the facts with respect to the domestic industry producing the subject imports.

Injury Determination: Price Effects Analysis

13. 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 allegedly 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.

Injury Determination: Causation

14. Article 3.1 of the AD Agreement and Article 15.1 of the SCM Agreement, because China's analysis of the alleged causal link was not based upon an objective examination of the record and positive evidence.

15. Article 3.4 of the AD Agreement and Article 15.4 of the SCM Agreement, because China's analysis of the alleged causal link was not based upon an evaluation of all relevant economic factors and indices having a bearing on the state of the industry.

16. Article 3.5 of the AD Agreement and Article 15.5 of the SCM Agreement, because:

- (a) China's analysis of the alleged causal link was not based upon an examination of any known factors other than allegedly 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 allegedly dumped and subsidized imports.

In view of the claims set forth above, the United States considers that China has also acted inconsistently with Article VI of the GATT 1994, Article 1 of the AD Agreement, and Article 10 of the SCM Agreement, which only permit antidumping or countervailing duty measures to be applied under the circumstances provided for in Article VI of the GATT 1994 and conducted in accordance with the AD Agreement and the SCM Agreement.

These measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

Therefore, the United States respectfully requests, pursuant to Article 6 of the DSU and Article 17.4 of the AD 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.
