

**CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES
ON BROILER PRODUCTS FROM THE UNITED STATES**

Request for the Establishment of a Panel by the United States

The following communication, dated 8 December 2011, 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 September 20, 2011, the United States requested consultations with 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 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 broiler products from the United States.¹ The United States and China held such consultations on 28 October 2011. Unfortunately, these consultations were unsuccessful in resolving this dispute.

The United States considers that China's measures imposing anti-dumping and countervailing duties on broiler products from the United States, as set forth in Ministry of Commerce of the People's Republic of China ("MOFCOM") Notice No. 8 [2010], Notice No. 26 [2010], Notice No. 51 [2010], and Notice No. 52 [2010], including any and all annexes, are inconsistent with China's commitments and obligations under the following provisions of the AD Agreement, SCM Agreement, and GATT 1994:

Calculation of Antidumping Margins

1. Articles 2.2 and 2.2.1.1 of the AD Agreement because MOFCOM failed to calculate costs on the basis of the records kept by the US producers under investigation. MOFCOM also failed to properly allocate production costs.
2. Article 2.4 of the AD Agreement because in calculating Respondents' dumping margins, including that of Respondent Keystone, MOFCOM precluded a fair comparison between the export price and normal value by improperly applying certain costs and expenses.

¹ WT/DS427/1.

3. Article 6.8 of the AD Agreement including Annex II because MOFCOM improperly applied facts available in determining the duty rate applicable to "other U.S. companies that neither filed a registration nor submitted a response" that were not investigated.

Explanation of Antidumping Determinations

4. Article 12.2.1 of the AD Agreement because MOFCOM failed to make available to the US respondents sufficiently detailed explanations for the preliminary determination on dumping and injury, and did not refer to matters of fact and law that determined whether the respondents' arguments were being accepted or not. MOFCOM did not make available to the US respondents the calculations used to determine the dumping margins in the preliminary determination, nor the data it relied upon in order to make the calculations.

5. Article 12.2.2 of the AD Agreement because MOFCOM failed to make available to the US respondents all relevant information on the matters of fact and law and reasons that led to the imposition of final measures, including, but not limited to, the reasons for the acceptance or rejection of arguments made by the exporters. MOFCOM did not make available to the US respondents the calculations used to determine the dumping margins in the final determination, nor the data it relied upon in order to make the calculations.

6. Article 12.2 of the AD Agreement because MOFCOM did not sufficiently detail the findings and conclusions reached on all issues of fact and law it considered material, including, but not limited to, the rejection of the respondents' reported costs as unreasonable, the calculations used to determine the respondents' preliminary and final dumping margins, the calculation of the duty rates applicable to "other US companies that neither filed a registration statement nor submitted a response" that were not investigated, and the data underlying the aforementioned calculations.

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

Calculation of Countervailing Duties

8. Article 12.7 of the SCM Agreement because MOFCOM improperly applied facts available in determining the countervailing duty rate applicable to "other U.S. companies that neither filed a registration nor submitted a response" that were not investigated.

9. Article VI:3 of the GATT 1994 and Article 19.4 of the SCM Agreement because MOFCOM levied countervailing duties on imported US broiler products in excess of the amount of the subsidy found to exist, including by improperly calculating the subsidy rates by failing to properly allocate the subsidy in relation to subject merchandise.

Explanation of Countervailing Duty Determinations

10. Article 22.3 of the SCM Agreement because MOFCOM did not sufficiently detail the findings and conclusions reached on all issues of fact and law it considered material, including, but not limited to, the calculations used to determine the respondents' preliminary and final subsidy rates, the calculation of the duty rates applicable to "other U.S. companies that neither filed a registration statement nor submitted a response" that were not investigated, and the data underlying the aforementioned calculations.

11. Article 22.4 of the SCM Agreement because MOFCOM failed to provide in sufficient detail explanations for the preliminary determination on the existence of a subsidy and injury, and did not

refer to the matters of fact and law that led to arguments being accepted or rejected. MOFCOM did not make available to the respondents or the US government the calculations of subsidy rates in the preliminary determination, nor the data it relied upon in order to make its calculations. Further, MOFCOM did not provide material information with respect to its calculation of the duty rates applicable to "other U.S. companies that neither filed a registration statement nor submitted a response" that were not investigated, nor to MOFCOM's use of facts available.

12. Article 22.5 of the SCM Agreement because MOFCOM failed to make available all relevant information on the matters of fact and law and reasons that led to the imposition of final measures, including the reasons for the acceptance or rejection of relevant arguments or claims made by the United States and the exporters. MOFCOM did not make available for the respondents or the US government the calculations of subsidy rates in the final determination, nor the data relied upon in order to make its calculations. Further, MOFCOM did not provide material information with respect to its calculation of the duty rates applicable to "other U.S. companies that neither filed a registration statement nor submitted a response" that were not investigated, nor its use of facts available.

13. Article 12.8 of the SCM Agreement because MOFCOM failed to disclose the essential facts under consideration which formed the basis for its determinations, thus impairing the respondents' ability to defend their interests.

Injury Determination: Price Effects Analysis

14. Articles 3.1 and 3.2 of the AD Agreement and Articles 15.1 and 15.2 of the SCM Agreement, because in its analysis of the price effects of imports under consideration, China did not discharge its obligations to determine whether there had been significant price undercutting by the allegedly dumped imports or whether the effect of such imports was to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. In particular:

- (a) China failed to account for different product mixes among subject imports and the domestic like product;
- (b) China failed to account for different levels of trade for subject import and like-product pricing data; and
- (c) China's findings that the dumped and subsidized imports had significant price effects failed to reflect an objective examination of the evidence in the record and/or are unsupported by positive evidence.

15. Article 3.5 of the AD Agreement and Article 15.5 of the SCM Agreement because MOFCOM's causation analysis relied on erroneous price effects findings and failed to take all relevant evidence concerning price effects into account.

16. Article 12.2 of the AD Agreement and Article 22.3 of the SCM Agreement because MOFCOM did not disclose its methodology for adjusting import prices to reflect their different level of trade or explain its rejection of respondent arguments concerning price effects.

17. Article 6.4 of the AD Agreement and Article 12.3 of the SCM Agreement because MOFCOM failed to provide interested parties with any opportunity to see MOFCOM's methodology for adjusting import prices to reflect their different level of trade.

Injury Determination: Impact of Subject Imports

18. Articles 3.1 and 3.4 of the AD Agreement and Articles 15.1 and 15.4 of the SCM Agreement because China's findings that the dumped and subsidized imports negatively impacted the domestic industry were unsupported by positive evidence and failed to reflect either an objective examination of the record evidence or an evaluation of all relevant economic factors and indices having a bearing on the state of the industry.

Injury Determination: Causation

19. Articles 3.1 and 3.5 of the AD Agreement and Articles 15.1 and 15.5 of the SCM Agreement because:

- (a) China's causal link analysis relied on findings that did not reflect an objective examination of the record and/or are unsupported by positive evidence;
- (b) China failed to examine all relevant evidence;

20. Articles 3.2 and 3.4 of the AD Agreement and Articles 15.2 and 15.4 of the SCM Agreement because China's causation analysis was not based on evidence that the effects of dumped and subsidized imports are what caused injury within the meaning of those Agreements.

Injury Determination: Definition of the Domestic Industry

21. Article 4.1 of the AD Agreement and Article 16.1 of the SCM Agreement because China improperly defined the domestic industry. In particular, China improperly limited the definition of the domestic industry to domestic enterprises supporting the antidumping and countervailing duty investigations.

22. Article 3.1 of the AD Agreement and 15.1 of the SCM Agreement because China failed to conduct a proper investigation or objective examination of the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products or the consequent impact of these imports on domestic producers of such products.

Evidentiary Issues

23. Articles 6.4 and 6.5.1 of the AD Agreement, and Articles 12.3 and 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. There was no indication that the information could not be summarized and no reasons were provided as to why summarization was not practicable.

24. Article 6.2 of the AD Agreement because MOFCOM failed to grant interested parties a full opportunity for the defence of their interests, among other things, by denying a request for a hearing by the United States.

25. Articles 12.2, 12.2.1, and 12.2.2 of the AD Agreement and Articles 22.3, 22.4, and 22.5 of the SCM Agreement because China failed to provide in sufficient detail all relevant information on the matters of fact and law and reasons which led to the imposition of final measures, including the reasons for the acceptance or rejection of relevant arguments or claims.

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 anti-dumping 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, Article 17.4 of the AD Agreement, and Article 30 of the SCM Agreement, that 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.
