

**CHINA – COUNTERVAILING AND ANTI-DUMPING DUTIES ON GRAIN ORIENTED  
FLAT-ROLLED ELECTRICAL STEEL FROM THE UNITED STATES**

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 20 July 2012, from the Delegation of the People's Republic of China, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 20 of the Working Procedures for Appellate Review, the People's Republic of China hereby notifies the Dispute Settlement Body of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the Panel Report in *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States* (WT/DS414) ("Panel Report"). Pursuant to Rule 20(1) of the *Working Procedures for Appellate Review*, China is simultaneously filing this Notice of Appeal with the Appellate Body Secretariat.

2. The measures at issue in this dispute imposed countervailing duties and anti-dumping duties on grain oriented flat-rolled electrical steel ("GOES") from the United States. An application for the initiation of an anti-dumping and countervailing duty investigation was filed by Chinese petitioners, alleging the existence of countervailable subsidies and dumping margins that caused or threatened to cause injury to the domestic Chinese industry. The Ministry of Commerce for the People's Republic of China ("MOFCOM") issued an affirmative final determination in each of these investigations. MOFCOM calculated *ad valorem* subsidy rates of 11.7% and 12% for the respondent companies, and dumping margins of 7.8% and 19.9%. Furthermore, MOFCOM determined that the domestic industry was suffering from material injury, and that the injury was caused by the dumped imports of GOES from Russia and the dumped and subsidized imports of GOES from the United States. MOFCOM made these determinations in its final determination, *Final Determination [2010] No. 21 (10 April 2010)*.

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 the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement").

4. For the reasons stated below, and as will be developed in its submissions and oral statements to the Appellate Body, China appeals the following errors of law and legal interpretation contained in the Panel Report and requests the Appellate Body to reverse or modify the related findings and

conclusions of the Panel. In doing so, China makes five specific claims, delineated below and to be detailed in its submissions to the Appellate Body.<sup>1</sup>

5. First, China seeks review by the Appellate Body of the Panel's interpretation of Article 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement as it relates to MOFCOM's discussion of the existence of adverse price effects. In particular, the Panel erred in interpreting the phrase "the effect of" from Article 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement as meaning that an authority must demonstrate that adverse price effects were caused by dumped or subsidized imports.<sup>2</sup> In doing so, the Panel did not consider the text, context, and object and purpose of those provisions and those agreements.<sup>3</sup>

6. Second, China seeks review by the Appellate Body of the Panel's application of Article 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement as it relates to MOFCOM's final determinations with respect to price effects.<sup>4</sup> The Panel's application of the legal standard erred in several fundamental aspects.<sup>5</sup> The Panel's errors of law and legal application include:

- (a) The Panel erred in interpreting MOFCOM's final determinations in a manner that caused the Panel to apply the obligations of Article 3.2 and Article 15.2 to facts not found by MOFCOM. Rather than apply the legal standard to MOFCOM's final determinations as written, the Panel examined findings never made by the authority and instead ignored or dismissed key factors that MOFCOM had discussed in its determinations.<sup>6</sup>
- (b) The Panel erred in requiring specific methodologies to satisfy the obligations of Article 3.2 and Article 15.2.<sup>7</sup> Instead of deferring to the discretion of the authority when considering price effects, the Panel imposed several methodological requirements for evaluating price effects that do not exist in the text of the agreements and were not raised by the parties to the underlying investigation.

7. Third, China seeks review by the Appellate Body under Article 11 of the DSU of how the Panel proceeded in this dispute. The Panel acted inconsistently with Article 11 of the DSU in conducting its analysis of price depression and price suppression by failing to conduct an objective assessment of the matter. Specifically, the Panel misinterpreted a fundamental MOFCOM finding of fact, the result of which caused the Panel to find MOFCOM's price depression and price suppression findings inconsistent with Article 3.2 and 15.2.<sup>8</sup> In doing so, the Panel also erred in failing to consider the totality of the evidence. The Panel approached individual pieces of evidence in isolation instead of addressing the ways in which MOFCOM's evidence interrelated.<sup>9</sup> Ultimately, the Panel erred in failing to focus on the MOFCOM decision as written. The Panel went beyond the rationale contained in the determination itself and relied upon the interpretation advocated by the United States and the Panel's own new price effects analysis.<sup>10</sup>

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<sup>1</sup>Pursuant to Rule 20(2)(d)(iii) of the *Working Procedures for Appellate Review* this Notice of Appeal includes citations to the paragraphs of the Panel Report containing the alleged errors. These citations, however, do not prejudice to the ability of China to refer to other paragraphs of the Panel Report in its appeal.

<sup>2</sup>Panel Report, para. 7.520.

<sup>3</sup>*Ibid.* paras. 7.519-7.522, 8.1(f).

<sup>4</sup>*Ibid.* paras. 7.536, 8.1(f).

<sup>5</sup>*Ibid.* paras. 7.523-7.536.

<sup>6</sup>*Ibid.*

<sup>7</sup>*Ibid.* paras. 7.528-7.530.

<sup>8</sup>*Ibid.* para. 7.542.

<sup>9</sup>Panel Report, paras. 7.523-7.543.

<sup>10</sup>*Ibid.*

8. Fourth, China seeks review by the Appellate Body of the Panel's finding that China acted inconsistently with its obligations under Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement regarding the disclosure of essential facts relating to MOFCOM's price effects analysis.<sup>11</sup> The Panel's finding rested entirely on its erroneous understanding of the legal obligations of Article 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement.<sup>12</sup> The Panel adopted a misguided understanding of "essential facts"<sup>13</sup> because the Panel misunderstood the underlying obligations at issue.

9. Fifth, China seeks review by the Appellate Body of the Panel's finding that China acted inconsistently with its obligations under Article 12.2.2 of the Anti-Dumping Agreement and Article 22.5 of the SCM Agreement regarding the public notice and explanation of MOFCOM's price effects analysis.<sup>14</sup> As with China's fourth claim, this Panel finding rested entirely on the Panel's erroneous understanding of the legal obligations of Article 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement.<sup>15</sup> In light of a proper interpretation of Article 3.2 and Article 15.2, MOFCOM adequately provided public notice of its findings regarding the existence of price depression and price suppression.

10. China respectfully requests that the Appellate Body reverse the findings and conclusions of the Panel that are based on the errors of law and legal interpretation identified above.

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<sup>11</sup>Ibid. paras. 7.575, 8.1(f).

<sup>12</sup>Ibid. paras. 7.573-7.574.

<sup>13</sup>Ibid. para. 7.575.

<sup>14</sup>Ibid. paras. 7.592, 8.1(f).

<sup>15</sup>Ibid. paras. 7.591-7.592.