

**UNITED STATES – DEFINITIVE ANTI-DUMPING AND
COUNTERVAILING DUTIES 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 1 December 2010, from the Delegation 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, 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 *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (WT/DS379/R) (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 are certain anti-dumping and countervailing duty determinations by the U.S. Department of Commerce ("USDOC"), and the definitive anti-dumping and countervailing duties imposed by the United States pursuant to their authority. As further specified in China's Request for Establishment of a Panel (WT/DS379/2), these determinations were made in the investigations of *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China* ("CWP"), *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China* ("OTR"), *Light-Walled Rectangular Pipe and Tube from the People's Republic of China* ("LWR"), and *Laminated Woven Sacks from the People's Republic of China* ("LWS").

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 *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").

4. China seeks review by the Appellate Body of the Panel's interpretation and application of Article 1.1 of the SCM Agreement as it relates to Commerce's determinations in all four countervailing duty investigations that certain state-owned enterprises and/or state-owned commercial banks are "public bodies" within the meaning of that provision. The Panel's errors of law and legal interpretation include:

- (a) The Panel erred in its interpretation and application of the term "public body" in Article 1.1(a)(1) of the SCM Agreement.¹
- (b) The Panel acted inconsistently with Articles 3.2 and 11 of the DSU by relying on municipal law usages of certain terms to interpret the term "public body" in Article 1.1(a)(1) of the SCM Agreement.²

5. China seeks review by the Appellate Body of the Panel's interpretation and application of Article 2.1(a) of the SCM Agreement as it relates to the finding by the USDOC in the OTR investigation that certain alleged loan subsidies were *de jure* specific. The Panel's errors of law and legal interpretation include:

- (a) The Panel erred in interpreting the term "subsidy" in Article 2.1(a) of the SCM Agreement to refer to either a financial contribution or a benefit, and by failing to give effect to the requirement of an explicit limitation of access to a subsidy.³
- (b) The Panel erred in its interpretation of the term "certain enterprises" in Article 2 of the SCM Agreement and in its application of that term to the measures that formed the basis for the USDOC's specificity determination.⁴ To the extent that the Panel's findings in respect of "certain enterprises" were based on its assessment of the facts, that assessment was not objective as required by Article 11 of the DSU.⁵
- (c) Conditionally, in the event that the Appellate Body sustains the Panel's interpretation of Article 2.1(a), China appeals the Panel's finding that the USDOC's specificity determination was not inconsistent with that interpretation of Article 2.1(a). The Panel's findings were legally insufficient to sustain Commerce's determination of *de jure* specificity, even under the Panel's interpretation of Article 2.1(a).⁶

6. China seeks review by the Appellate Body of the Panel's interpretation and application of Article 2.2 of the SCM Agreement as it relates to the finding by the USDOC in the LWS investigation that the provision of allegedly subsidized land-use rights was "limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority". The Panel's errors of law and legal interpretation include:

- (a) The Panel erred in interpreting the term "subsidy" in Article 2.2 of the SCM Agreement to refer to either a financial contribution or a benefit, and in finding that Article 2.2 permits an investigating authority to make a finding of regional specificity based solely "on the element of the financial contribution".⁷

¹Panel Report, paras. 8.55-8.94, 8.127-8.143. The referenced paragraph numbers indicate the primary instances of the identified errors. China appeals all findings and conclusions of the Panel that are derived from or related to the identified errors, as well as the relevant findings and conclusions of the Panel set forth in Section XVII of the Panel Report.

²Panel Report, paras. 8.60-8.63, para. 8.69.

³Panel Report, paras. 9.25-9.32, para. 9.95, paras. 9.106-9.107.

⁴Panel Report, paras. 9.66-9.72, para. 9.95, paras. 9.106-9.107.

⁵Panel Report, paras. 9.66-9.72, para. 9.95, paras. 9.106-9.107.

⁶Panel Report, paras. 9.66-9.72, para. 9.95, paras. 9.106-9.107.

⁷Panel Report, para. 9.155.

- (b) The Panel erred in its interpretation of Article 2.2 of the SCM Agreement in finding that the existence of a "distinct" or "unique" "regime" for the provision of a subsidy is legally relevant to a determination of specificity under this provision.⁸

7. China seeks review by the Appellate Body of the Panel's interpretation and application of Article 14(d) of the SCM Agreement as it relates to the USDOC's rejection of in-country private prices for hot-rolled steel as a benchmark in the CWP and LWR investigations. The Panel's errors of law and legal interpretation include:

- (a) The Panel erred in interpreting Article 14(d) to permit the rejection of in-country private prices as a benchmark where the only evidence relied upon by the investigating authority is that the government is a predominant supplier of the good in question.⁹
- (b) The Panel erred in interpreting Article 14(d) to permit investigating authorities to reject private prices as a benchmark based exclusively on evidence relating to government market share, so long as the investigating authority "consider[s] ... arguments and evidence" relating to factors other than government market share.¹⁰
- (c) The Panel acted inconsistently with Article 11 of the DSU by appearing to attribute to the USDOC a rationale for its rejection of private prices that differs from the rationale that appears in the USDOC's published determinations.¹¹

8. China seeks review by the Appellate Body of the Panel's interpretation and application of Article 14(b) of the SCM Agreement as it relates to the USDOC's selection of loan benchmarks in the OTR, LWS, and CWP investigations. The Panel's errors of law and legal interpretation include:

- (a) The Panel erred in finding that the benchmark used by the USDOC was "a comparable commercial loan which the firm could actually obtain on the market" within the meaning of Article 14(b).¹²
- (b) The Panel acted inconsistently with Article 11 of the DSU by failing to assess the conformity of the benchmark used by the USDOC with the legal requirements of Article 14(b).¹³ To the extent that the Panel's findings and conclusions in respect of the USDOC loan benchmark were based on its assessment of the facts, that assessment was not objective as required by Article 11 of the DSU.¹⁴
- (c) The Panel erred in its interpretation and application of Article 14(b) in finding that observed interest rates for loans denominated in a particular currency can be rejected as a "distorted" benchmark, and in finding that the USDOC had a legal basis to reject observed RMB interest rates as a loan benchmark.¹⁵

9. China seeks review by the Appellate Body of the Panel's conclusion that, in respect of the imposition of countervailing duties, the covered agreements do not require the United States to take into account the extent to which it simultaneously offsets the same subsidies through the manner in

⁸Panel Report, paras. 9.159-9.164.

⁹Panel Report, paras. 10.38-10.47, para. 10.61.

¹⁰Panel Report, paras. 10.55-10.56.

¹¹Panel Report, paras. 10.55-10.56.

¹²Panel Report, paras. 10.203-10.209.

¹³Panel Report, paras. 10.203-10.209.

¹⁴Panel Report, paras. 10.203-10.209.

¹⁵Panel Report, paras. 10.108-10.130; paras. 10.144-10.148.

which it calculates anti-dumping duties under its non-market economy (NME) methodology. The Panel's errors of law and legal interpretation include:

- (a) The Panel erred in finding that Article VI:3 of the GATT 1994 and Article 19.4 of the SCM Agreement do not require the United States to take into account the extent to which the use of its NME methodology in a parallel anti-dumping investigation affects the existence and amount of the subsidy that remains attributable to the imported product under investigation.¹⁶
- (b) The Panel erred in finding that Article 19.3 of the SCM Agreement does not require the United States to take into account the extent to which the use of its NME methodology in a parallel anti-dumping investigation affects the appropriate amount of the countervailing duty to be levied.¹⁷
- (c) The Panel erred in finding that Article 10 of the SCM Agreement does not require the United States to take all necessary steps to ensure that it does not offset the same subsidies twice through the imposition of two different duties, and in finding that the United States did not act inconsistently with Article 10 in imposing the challenged countervailing duty measures.¹⁸
- (d) The Panel erred in finding that the United States did not act inconsistently with Article 32.1 of the SCM Agreement in imposing the challenged countervailing duty measures.¹⁹
- (e) The Panel erred in finding that it was China's obligation to "conclusively establish[]" that the USDOC offset the same subsidies twice in the investigations at issue.²⁰

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. With respect to the claims of error identified in paragraphs 5 and 9 above, China respectfully requests that the Appellate Body complete the analysis to conclude that the challenged measures were inconsistent with the obligations of the United States under the covered agreements. 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 as they pertain to all of the foregoing claims of error, in respect of which the Panel exercised judicial economy.²¹

¹⁶Panel Report, paras. 14.112-14.123, para. 14.136.

¹⁷Panel Report, paras. 14.128-14.130.

¹⁸Panel Report, paras. 14.137-14.138.

¹⁹Panel Report, para. 14.139.

²⁰Panel Report, para. 14.76.

²¹Panel Report, para. 13.1.