



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

**NOTIFICATION OF AN OTHER APPEAL BY THE EUROPEAN UNION  
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 European Union, is being circulated to Members.

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Pursuant to Article 16.4 and Article 17.1 of the *DSU*, the European Union hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from the European Union (WT/DS460)* (AB-2015-5). Pursuant to Rule 23(1) of the *Working Procedures for Appellate Review*, the European Union simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

For the reasons to be further elaborated in its submissions to the Appellate Body, the European Union appeals, and requests the Appellate Body to reverse, modify or declare moot and of no legal effect the findings, conclusions and recommendations of the Panel, with respect to the following errors of law and legal interpretations contained in the Panel Report, and where indicated to complete the analysis<sup>1</sup>:

**I. ADDITIONAL WORKING PROCEDURES ON BCI**

1. The European Union appeals and seeks the reversal and/or modification of the Panel's legal findings and conclusions concerning the designation of Business Confidential Information (BCI).<sup>2</sup> The Panel erred in its interpretation and application of Articles 18.2 and 13.1 of the DSU and Articles 17.7 and 6.5 of the Anti-Dumping Agreement. The Panel erroneously found that information designated as confidential within the meaning of Article 6.5 of the Anti-Dumping Agreement is automatically confidential within the meaning of Article 17.7 of the Anti-Dumping Agreement and Article 18.2 of the DSU and may be automatically designated as BCI within the meaning of BCI Procedures. The European Union requests the Appellate Body to complete the analysis.

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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 an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of the European Union to refer to other paragraphs of the Panel Report in the context of its appeal.

<sup>2</sup> Panel Report, paras. 7.18-7.25, particularly paras. 7.21 ("... the phrase "confidential information" in Article 17.7 refers to the confidential information previously examined by the investigating authority and treated as confidential pursuant to Article 6.5 – and which is now provided to a dispute settlement panel pursuant to Article 17.7.") and 7.25 ("... we have decided not to modify paragraph 1 of the BCI Procedures in the manner proposed by the European Union.").

2. The European Union appeals and seeks the reversal and/or modification of the Panel's legal findings and conclusions concerning the provision of an authorizing letter.<sup>3</sup> The Panel erred in its interpretation and application of Articles 18.2 and 13.1 of the DSU and Articles 17.7 and 6.5 of the Anti-Dumping Agreement. The Panel erroneously found that information designated as confidential within the meaning of Article 6.5 of the Anti-Dumping Agreement is automatically confidential within the meaning of Article 17.7 of the Anti-Dumping Agreement and Article 18.2 of the DSU, and that it may only be disclosed within the meaning of Article 17.7 of the Anti-Dumping Agreement on the basis of a formal authorization from the person, body or authority providing such information to the investigating authority in the municipal anti-dumping proceeding. The European Union requests the Appellate Body to complete the analysis.

## II. ARTICLE 6.2 OF THE DSU

3. The European Union appeals and seeks the reversal and/or modification of the Panel's legal findings and conclusions that, with respect to the European Union's claim under Article 2.2, the panel request did not comply with Article 6.2 of the DSU, because it allegedly did not "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly".<sup>4</sup> The Panel erred in its interpretation and application of Article 6.2 of the DSU. The European Union requests the Appellate Body to complete the analysis. However, if the Appellate Body upholds the Panel's findings concerning the European Union's claim under Article 2.2.2 of the Anti-Dumping Agreement<sup>5</sup>, or completes the analysis by confirming that claim, then it need not consider this appeal point.

4. The European Union appeals and seeks the reversal and/or modification of the Panel's legal findings and conclusions that, with respect to the European Union's claim under Article 2.2.1.1, the panel request did not comply with Article 6.2 of the DSU, because it allegedly did not "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly".<sup>6</sup> The Panel erred in its interpretation and application of Article 6.2 of the DSU. The European Union requests the Appellate Body to complete the analysis. However, if the Appellate Body upholds the Panel's findings concerning the European Union's claim under Article 2.2.2 of the Anti-Dumping Agreement<sup>7</sup>, or completes the analysis by confirming that claim, then it need not consider this appeal point.

## III. DUMPING

5. If the Appellate Body reverses the Panel's legal findings and conclusions to the effect that China acted inconsistently with Article 6.7 and Annex I, paragraph 7 of the Anti-Dumping Agreement<sup>8</sup>, and does not complete the analysis by finding that China acted inconsistently with these provisions, then the European Union appeals the Panel's legal findings and conclusions with respect to Article 6.8 and Annex II, paragraphs 3 and 6.<sup>9</sup> The European Union requests the Appellate Body to reverse and/or modify these legal findings and conclusions. The Panel erred in its interpretation and application of Article 6.8 and Annex II, paragraphs 3 and 6. Investigating

<sup>3</sup> Panel Report, paras. 7.26-7.29, and para. 7.21, particularly the finding that ("... the phrase "confidential information" in Article 17.7 refers to the confidential information previously examined by the investigating authority and treated as confidential pursuant to Article 6.5 – and which is now provided to a dispute settlement panel pursuant to Article 17.7.") and the interpretation of the phrase "person, body or authority".

<sup>4</sup> Panel Report, para. 8.9, first sentence. The Panel Report contains a typographical error insofar as para. 8.9 refers to Article 2.2.1 (found within the terms of reference in para. 7.49 of the Panel Report), when it should refer to Article 2.2 (found outside the terms of reference in para. 7.48 of the Panel Report). The European Union also appeals para. 7.48 of the Panel Report, particularly the final sentence. The European Union does not appeal para. 7.47 of the Panel Report.

<sup>5</sup> China's Notice of Appeal, paras. 5(a)(i) and (ii).

<sup>6</sup> Panel Report, para. 8.9, second sentence, insofar as it contains the phrase: "did not reasonably reflect the costs associated with the product under consideration". The European Union also appeals the eighth sentence of para. 7.50 of the Panel Report ("We also note that China accepts ..."), insofar as it does not include the phrase "reasonably reflect the costs associated with the production and sale of the product under consideration", and the final sentence of para. 7.50, insofar as the term "such obligations" does not include that phrase.

<sup>7</sup> China's Notice of Appeal, paras. 5(a)(i) and (ii).

<sup>8</sup> Panel Report, para. 8.6(c) and paras. 7.98-7.101; China's Notice of Appeal, para. 5(b).

<sup>9</sup> Panel Report, para. 8.7(a) and para. 7.102, particularly the final sentence.

authorities are not permitted to disregard rectified data only because it is provided at verification, wholly failing in this respect to exercise their discretion, and base their determinations instead on facts available. The European Union requests the Appellate Body to complete the analysis.

#### **IV. INJURY**

6. The European Union appeals the Panel's legal findings and conclusions concerning the interpretation and application of Article 3.1 and the second sentence of Article 3.2 of the Anti-Dumping Agreement, specifically with respect to the obligation to consider the effect of the price of the dumped imports on the price of the domestic product being compared – and particularly with respect to the question of whether the price of Grade C imports had any significant price undercutting effect on domestic Grade C products.<sup>10</sup> The European Union submits that these legal findings and conclusions of the Panel are legally erroneous and requests that the Appellate Body reverse and/or modify them, and complete the analysis.

7. The European Union appeals the Panel's legal findings and conclusions concerning the interpretation and application of Article 3.1 and the second sentence of Article 3.2 of the Anti-Dumping Agreement, specifically with respect to the question of whether MOFCOM's findings of price undercutting in respect of Grades B and C were sufficient to comply with MOFCOM's obligation to consider whether or not the price of the dumped imports had a significant effect on the price of the domestic product.<sup>11</sup> The European Union submits that these legal findings and conclusions of the Panel are legally erroneous and requests that the Appellate Body reverse and/or modify them, and complete the analysis.

8. The European Union appeals the Panel's legal findings and conclusions concerning the interpretation and application of Articles 3.1 and Article 3.4 of the Anti-Dumping Agreement, specifically with respect to the assessment of the impact of the dumped imports on the domestic industry.<sup>12</sup> In effect, the Panel erroneously concluded that MOFCOM's failure to comply with the requirements of Article 3.2, as properly understood, and Article 3.5, had no implications for the consistency of the measure at issue with Article 3.4, and that, in this respect, there were no independent claims under Article 3.5. The European Union submits that these findings and conclusions of the Panel are legally erroneous and requests that the Appellate Body reverse and/or modify them, and complete the analysis.

9. The European Union appeals – pursuant to Article 11 of the DSU – certain of the Panel's legal findings and conclusions concerning Articles 3.1 and Article 3.5 of the Anti-Dumping Agreement, specifically with respect to the assessment of causation.<sup>13</sup> The European Union submits that, in this respect, the Panel failed to make an objective assessment of the matter before it, as required by Article 11 of the DSU. It wrongly concluded that the European Union had not made relevant independent claims under Article 3.5, and it failed to assess those claims and arguments. The European Union requests that the Appellate Body reverse and/or modify these legal findings and conclusions, and complete the analysis.

#### **V. PROCEDURAL ISSUES**

10. The European Union appeals the Panel's legal findings and conclusions concerning the interpretation and application of Article 6.9 of the Anti-Dumping Agreement, specifically with respect to the obligation to adequately disclose essential facts – and particularly with respect to the data underlying MOFCOM's determination of dumping with respect to SMST and Tubacex.<sup>14</sup> The European Union submits that these legal findings and conclusions of the Panel are legally erroneous and requests that the Appellate Body reverse or modify them, and complete the analysis.

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<sup>10</sup> Panel Report, para. 8.7(b)(i), first phrase, para. 7.130, and paras. 7.121-7.129.

<sup>11</sup> Panel Report, para. 8.7(b)(i), second phrase, para. 7.143, and paras. 7.136-7.142.

<sup>12</sup> Panel Report, para. 8.7(b)(ii), first phrase, paras. 7.152-7.155 and para. 7.170, penultimate sentence.

<sup>13</sup> Panel Report, para. 7.192, particularly the final sentence.

<sup>14</sup> Panel Report, para. 8.7(d)(i) and paras. 7.234-7.236, particularly para. 7.236.