

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

Request for Consultations by the United States

The following communication, dated 20 September 2011, from the delegation of the United States to the delegation of China and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of 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*, 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, 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. China's measures appear to be inconsistent with China's obligations including under the provisions of the GATT 1994, the AD Agreement, and the SCM Agreement.

In particular, China's anti-dumping and countervailing duty measures on broiler products from the United States appear to be inconsistent with the following provisions of the GATT 1994, the AD Agreement, and the SCM Agreement:

1. Articles 2.2 and 2.2.1.1 of the AD Agreement because China failed to calculate costs on the basis of the records kept by the US producers under investigation.
2. Article 2.2.1.1 of the AD Agreement because China failed to properly allocate production costs.
3. 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 provide, or require the applicant to provide, adequate, non-confidential summaries of allegedly confidential information.
4. Article 6.8 of the AD Agreement including Annex II and Article 12.7 of the SCM Agreement because China improperly based its determinations on the facts available.

5. Article VI:3 of the GATT 1994 and Article 19.4 of the SCM Agreement, because China levied countervailing duties on imported U.S. broiler products in excess of the amount of subsidy found to exist.
6. Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement, and Articles 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement, because China's analysis of the effects of imports under investigation and alleged causal link was not based upon an objective examination of positive evidence, an examination of all relevant economic factors and indices having a bearing on the state of the industry, or an examination of all relevant evidence before the authorities.
7. Articles 3.1, 4.1, and 5.1 of the AD Agreement and Articles 11.1, 15.1, and 16.1 of the SCM Agreement because China improperly defined the domestic industry and did not conduct a proper investigation or objective examination of the domestic industry producing the subject imports.
8. Article 6.9 of the AD Agreement and Article 12.8 of the SCM Agreement because China failed to disclose the "essential facts" underlying its determinations.
9. 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 the findings and conclusions reached on all issues of fact and law it considered material, and the reasons for the acceptance or rejection of relevant arguments or claims.
10. Article 6.2 of the AD Agreement because China failed to grant interested parties a full opportunity for the defense of their interests.
11. Article 1 of the AD Agreement as a consequence of the breaches of the AD Agreement described above.
12. Article 10 of the SCM Agreement as a consequence of the breaches of the SCM Agreement described above.
13. Article VI of the GATT 1994 as a consequence of the breaches of the AD and SCM Agreements described above.

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

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
