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**UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES  
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 8 April 2014, from the Delegation of the People's Republic of China, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review* (WT/AB/WP/6) ("Working Procedures"), China hereby notifies the Dispute Settlement Body of its decision to appeal certain issues of law and legal interpretation in the Panel Report in *United States – Countervailing and Anti-Dumping Measures on Certain Products From China* (WT/DS449) ("Panel Report").

2. Pursuant to Rules 20(1) and 21(1) of the Working Procedures, China files this Notice of Appeal together with its Appellant's Submission with the Appellate Body Secretariat.

3. Pursuant to Rule 20(2)(d)(iii) of the Working Procedures, this Notice of Appeal provides an indicative list of the paragraphs of the Panel Report containing the alleged errors of law and legal interpretation by the Panel in its report, without prejudice to China's ability to rely on other paragraphs of the Panel Report in its appeal.

4. China seeks review by the Appellate Body of the following errors of law and legal interpretation by the Panel in its Report, and requests the following findings by the Appellate Body.

**I. Review of the Panel's Findings under Article X:2 of the GATT 1994**

5. The Panel erred in its interpretation and application of Article X:2 of the GATT 1994, in so far as the Panel found that United States Public Law 112-99 (P.L. 112-99) is consistent with Article X:2 because it does not effect an "advance in a rate of duty or other charge on imports under an established and uniform practice" or impose "a new or more burdensome requirement, restriction or prohibition on imports" within the meaning of that provision.<sup>1</sup> In particular, the Panel erred because:

- it failed to interpret Article X:2 properly in finding that this provision requires a comparison between the rates, requirements, and restrictions effected by the measure at issue, on the one hand, and the rates, requirements, and restrictions previously applicable "under an established and uniform practice", on the other;<sup>2</sup>
- it failed to interpret Article X:2 properly in finding that this provision requires a comparison between the rates, requirements, and restrictions effected by the measure at issue in relation to the rates, requirements, and restrictions that existed under any

<sup>1</sup> Panel Report, paras. 7.191, 7.208, 7.209-7.211, and 8.1(b)(ii).

<sup>2</sup> Panel Report, paras. 7.155-7.161 and 7.201-7.203.

baseline of comparison prior to the measure's enactment, rather than prior to its enforcement;<sup>3</sup>

- it incorrectly applied Article X:2 to the facts of this dispute in finding that Section 1 of P.L. 112-99 did not effect an "advance in a rate of duty or other charge on imports" or impose a "new or more burdensome" requirement or restriction on imports within the meaning of that provision<sup>4</sup>; and
- if the Appellate Body were to consider that the Panel made any factual findings with respect to the rates, requirements, or restrictions applicable under U.S. municipal law prior to the enforcement or enactment of Section 1 of P.L. 112-99, the Appellate Body would need to reverse any such findings on the grounds that the Panel applied an incorrect standard of review, and failed to make an objective assessment of the matter before it, including an objective assessment of the facts, as required by Article 11 of the DSU.<sup>5</sup>

6. For these reasons, China requests that the Appellate Body reverse the Panel's finding that Article X:2 of the GATT 1994 requires a comparison between the rates, requirements, and restrictions effected by Section 1 of P.L. 112-99 and the rates, requirements, or restrictions that were applicable "under an established and uniform practice" prior to the measure's enactment.<sup>6</sup>

7. China requests that the Appellate Body reverse the Panel's findings that Section 1 of P.L. 112-99 did not effect an "advance in a rate of duty" or impose a "new or more burdensome" requirement or restriction on imports under Article X:2 of the GATT 1994.<sup>7</sup>

8. Accordingly, China requests that the Appellate Body reverse the Panel's ultimate finding in paragraph 8.1(b)(ii) of the Panel Report that the United States did not act inconsistently with Article X:2 of the GATT 1994 because Section 1 of P.L. 112-99 did not effect an "advance in a rate of duty or other charge on imports under an established and uniform practice" or impose "a new or more burdensome requirement, restriction or prohibition on imports" within the meaning of that provision.

9. China requests that the Appellate Body complete the legal analysis to find, instead, that Section 1 of P.L. 112-99 effected an "advance in a rate of duty or other charge on imports under an established and uniform practice" and imposed "a new or more burdensome requirement, restriction or prohibition on imports" within the meaning of Article X:2 of the GATT 1994. Consequently, the Appellate Body should also find that the United States acted inconsistently with Article X:2 of the GATT 1994 in enforcing Section 1 of P.L. 112-99 prior to its official publication.

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<sup>3</sup> Panel Report, paras. 7.168, 7.171.

<sup>4</sup> Panel Report, paras. 7.165-7.191 and 7.204-7.208.

<sup>5</sup> Panel Report, paras. 7.158-7.186.

<sup>6</sup> Panel Report, paras. 7.155, 7.168, 7.171.

<sup>7</sup> Panel Report, para. 7.158-7.186, 7.190-7.191, 7.206-7.208.