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**UNITED STATES – COUNTERVAILING DUTY MEASURES
ON CERTAIN PRODUCTS FROM CHINA**

RECOURSE TO ARTICLE 21.5 OF THE DSU BY CHINA

**NOTIFICATION OF AN OTHER APPEAL BY CHINA UNDER ARTICLES 16.4 AND 17.1
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 2 May 2018, from the delegation of China, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 23 of the Working Procedures for Appellate Review (WT/AB/WP/6) ("Working Procedures"), China hereby notifies its decision to appeal certain issues of law and legal interpretation contained in the Report of the Panel in *United States – Countervailing Duty Measures on Certain Products from China* (Article 21.5 – China) (WT/DS437/RW) ("Panel Report").

2. Pursuant to Rule 23(1) of the Working Procedures, China files this Notice of Other Appeal with the Appellate Body Secretariat, along with a written submission prepared in accordance with Rule 21(2) of the Working Procedures as required by Rule 23(3).

3. Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures, this Notice of Other Appeal provides an indicative list of paragraphs of the Panel Report containing the errors of law and legal interpretation alleged herein, without prejudice to China's ability to refer to other paragraphs of the Panel Report in the context of its appeal.

Review of the Panel's Findings under Article 1.1(a)(1) of the SCM Agreement

4. China seeks review by the Appellate Body of the Panel's interpretation and application of Article 1.1(a)(1) of the SCM Agreement. In particular, China seeks review of the Panel's finding that the legal standard for "public body" determinations under Article 1.1(a)(1) does not "require a particular degree or nature of connection in all cases between an identified government function and the particular financial contribution at issue". China respectfully requests that the Appellate Body *reverse* this finding, articulated in paragraphs 7.36 and 7.106, as well as the Panel's conclusion that "China failed to demonstrate that the USDOC's public body determinations in the relevant Section 129 proceedings are inconsistent with Article 1.1(a)(1) of the SCM Agreement because they are based on an improper legal standard."

5. China requests that the Appellate Body *reverse* the Panel's finding in paragraph 7.72 that China "failed to demonstrate that the USDOC misconstrued the concept of 'meaningful control' and its relevance to the substantive legal standard for a public body inquiry", as well as the Panel's conclusion in paragraph 7.105 that it did "not consider that the USDOC's determinations were based on 'mere ownership or control over an entity by a government, without more'", because the Panel's conclusions were premised on its disagreement with China concerning the proper legal standard.

6. China requests that the Appellate Body *reverse* the Panel's conclusion in paragraphs 7.103 and 7.106 that China did not demonstrate that the USDOC acted inconsistently with Article 1.1(a)(1) of the SCM Agreement for having failed to consider relevant evidence on the record in the five investigations in which China participated, because this conclusion was also premised on the Panel's disagreement with China concerning the proper legal standard.

7. China requests that the Appellate Body *reverse* the Panel's ultimate conclusion in paragraphs 7.107 and 8.1(a) that China did not demonstrate that the United States acted inconsistently with Article 1.1(a)(1) of the SCM Agreement in the Pressure Pipe, Line Pipe, Lawn Groomers, Kitchen Shelving, OCTG, Wire Strand, Seamless Pipe, Print Graphics, Aluminum Extrusions, Steel Cylinders, and Solar Panels Section 129 proceedings.

8. China further requests that the Appellate Body *complete the analysis* and find that the USDOC's public body determinations in the relevant Section 129 proceedings are inconsistent with Article 1.1(a)(1) of the SCM Agreement because they are based on an improper legal standard.

9. In relation to the Panel's finding that China failed to demonstrate that the Public Bodies Memorandum is inconsistent "as such" with Article 1.1(a)(1) of the SCM Agreement, China requests that the Appellate Body *reverse* the Panel's conclusion in paragraph 7.136 that China did not demonstrate that the Public Bodies Memorandum is inconsistent "as such" with Article 1.1(a)(1) of the SCM Agreement because the Public Bodies Memorandum is based on an improper legal standard. China requests that the Appellate Body *reverse* the Panel's conclusion in paragraph 7.142 that the Public Bodies Memorandum does not restrict in a material way the USDOC's discretion to act consistently with Article 1.1(a)(1), as well as the Panel's ultimate conclusion to that effect in paragraph 8.1(b).

10. China further requests that the Appellate Body *complete the analysis* and find that the Public Bodies Memorandum is inconsistent "as such" with Article 1.1(a)(1) of the SCM Agreement because it is premised on an erroneous legal standard and restricts in a material way the USDOC's discretion to make a determination consistent with Article 1.1(a)(1) of the SCM Agreement.

Review of the Panel's Findings under Articles 1.1(b) and 14(d) of the SCM Agreement

11. China seeks review by the Appellate Body of the Panel's interpretation and application of Articles 1.1(b) and 14(d) of the SCM Agreement. In particular, China seeks review of the Panel's finding that "an investigating authority may reject in-country prices if there is evidence of price distortion, and not only if there is evidence that a government 'effectively determines' the price of the goods at issue."¹ The Panel found that an investigating authority may reject available in-country benchmark prices if the investigating authority provides a sufficient explanation of "how government intervention in the market resulted in domestic prices for the inputs at issue deviating from a market-determined price".² In reaching these conclusions, the Panel failed to interpret and give effect to the term "market" in Article 14(d) of the SCM Agreement, including as that term appears within the context of the phrase "prevailing market conditions ... in the country of provision".

12. China respectfully requests that the Appellate Body correct the Panel's errors of legal interpretation and application, and accordingly *modify* the basis for the Panel's conclusion that the United States acted inconsistently with Articles 1.1(b) and 14(d) of the SCM Agreement in the OCTG, Solar Panels, Pressure Pipe, and Line Pipe Section 129 proceedings.³

¹ Panel Report, para. 7.168.

² Panel Report, paras. 7.206. See also Panel Report, paras. 7.158, 7.205, 7.223.

³ Panel Report, para. 8.1(c).