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CHINA – COUNTERVAILING AND ANTI-DUMPING DUTIES ON GRAIN ORIENTED FLAT-ROLLED ELECTRICAL STEEL FROM THE UNITED STATES

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES

Request for Consultations

The following communication, dated 13 January 2014, 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 21.5 of the DSU.

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My authorities have instructed me to request consultations with the Government of the People's Republic of China ("China") with respect to China's measures continuing to impose antidumping and countervailing duties on grain oriented flat-rolled electrical steel ("GOES") from the United States, as set forth in Public Notice [2013] No. 51, including its annexes, issued by China's Ministry of Commerce ("MOFCOM") and in MOFCOM Public Notice No. 21 [2010], including its annexes. Paragraph 1 of the *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding*[1] reached between the United States and China reflects that, "[s]hould the United States consider that the situation described in Article 21.5 of the DSU exists, the United States will request that China enter into consultations with the United States."[2] As set out below, the United States considers that China's measure taken to comply with the recommendations and rulings of the Dispute Settlement Body ("DSB") in this dispute is not consistent with the covered agreements and therefore requests that China enter into consultations.[3]

On 16 November 2012, the DSB adopted its recommendations and rulings in the dispute *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States* ("*China – GOES*") (DS414). The DSB found that China imposed antidumping and countervailing duties on U.S. exports of GOES in a manner that breached China's obligations under the AD Agreement and the SCM Agreement and recommended that China bring its measures into conformity with its obligations under these Agreements.

On 3 May 2013, the arbitrator appointed to determine China's reasonable period of time to comply issued an Award providing China eight months and 15 days to implement the recommendations and rulings of the DSB in this dispute, expiring on 31 July 2013. On 31 July 2013, China issued a re-determination in relation to the duties at issue in this dispute, as set forth in MOFCOM's Public

[1] WT/DS414/14.

[2] Original footnote 1 following this sentence reads: "The Parties agree that under Article 21.5 of the DSU, consultations are not obligatory."

[3] Notwithstanding the view of the parties that consultations are not required under Article 21.5 of the DSU, the United States takes note of the consultation provisions set out in Article 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"), which have been invoked in relation to this matter. *See* WT/DS414/1.

Notice [2013] No. 51, including its annexes. This re-determination continues the imposition of antidumping and countervailing duties on imports of GOES from the United States.

The United States considers that China has failed to implement the DSB's recommendations and rulings. In particular, it appears that China's continuing antidumping and countervailing measures on GOES from the United States are imposed inconsistently with the following provisions of the AD Agreement, SCM Agreement, and GATT 1994:

1. Articles 3.1 and 3.2 of the AD Agreement, and Articles 15.1 and 15.2 of the SCM Agreement, because China's analysis of the alleged price effects of imports under investigation did not involve an objective examination of the record and was not based on positive evidence.

2. Articles 3.1, 3.4, and 3.5 of the AD Agreement, and Articles 15.1, 15.4, and 15.5 of the SCM Agreement, because: (a) China's analysis of the alleged causal relationship between subject imports and injury to the domestic industry was not based on an objective examination of the record and positive evidence, including an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, an examination of all relevant evidence before the authorities, or an examination of any known factors other than allegedly dumped and subsidized imports which at the same time were injuring the domestic industry; and (b) China failed to meet the requirement that injuries caused by other factors must not be attributed to the allegedly dumped and subsidized imports.

3. 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 re-determination.

4. Articles 12.2 and 12.2.2 of the AD Agreement, and Articles 22.3 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.

5. Article 1 of the AD Agreement as a consequence of the breaches of the AD Agreement described above.

6. Article 10 of the SCM Agreement as a consequence of the breaches of the SCM Agreement described above.

7. Article VI of the GATT 1994 as a consequence of the breaches of the AD and SCM Agreements described above.

We look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations, which, consistent with paragraph 1 of the *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding*, the "[p]arties agree to hold … within 15 days from the date of receipt of the [consultations] request."

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