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

RECOURSE TO ARTICLE 22.2 OF THE DSU BY CHINA

The following communication, dated 17 October 2019, from the delegation of China to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

China requests that the following item be included in the agenda of the meeting of the Dispute Settlement Body ("DSB") to be held on 28 October 2019:

1. *United States – Countervailing Duty Measures on Certain Products from China* (DS437)
 - A. Recourse to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlements of Disputes by China

The original dispute underlying this request concerns the imposition by the United States of countervailing duties on a range of products from China, as well as the investigations leading to the imposition of such duties.

Before the original panel, China challenged several aspects of the investigations conducted by the U.S. Department of Commerce and the determinations resulting from such investigations. The panel found that the United States acted inconsistently with several of its obligations under the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). China and the United States both appealed aspects of the panel's findings. On appeal, the Appellate Body reversed certain of the panel's findings and confirmed that the United States had acted inconsistently with several of its obligations under the SCM Agreement. The Appellate Body recommended that the United States bring its measures into conformity with its obligations under the SCM Agreement. The original panel report, as modified by the Appellate Body report, was adopted on 16 January 2015.¹

By communication dated 15 April 2016, China and the United States informed the DSB of the Understanding between China and the United States regarding procedures under Articles 21 and 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") with respect to this dispute ("Sequencing Agreement").² The Sequencing Agreement provides that the reasonable period of time ("RPT") in this dispute would expire on 1 April 2016. Paragraph 6 of the Sequencing Agreement provides that China may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU in the event that the DSB concludes, following a proceeding under Article 21.5 of the DSU, that a measure taken to comply does not exist or is inconsistent with a covered agreement, and that the United States will not assert that China is precluded from obtaining such authorization on the grounds that the request was made outside the 30-day time period specified in Article 22.6 of the DSU.

China considered that the United States had failed to bring its measures into compliance with the recommendations and rulings of the DSB within the RPT. On 13 May 2016, China requested consultations with the United States pursuant to Article 21.5 of the DSU. Consultations were held

¹ See WT/DS437/R, as modified by WT/DS437/AB/R.

² See Understanding between China and the United States regarding procedures under Articles 21 and 22 of the DSU ("Sequencing Agreement"), WT/DS437/19.

on 27 May 2016, but failed to resolve the dispute. On 8 July 2016, China requested the establishment of a panel pursuant to Article 21.5 of the DSU. The report of the compliance panel was circulated to Members on 21 March 2018. China and the United States both appealed aspects of the compliance panel's report.

On 15 August 2019, the DSB adopted the compliance panel report, as modified by the Appellate Body Report.³ In its recommendations and rulings, the DSB ruled that the U.S. measures at issue are inconsistent with the relevant provisions of the SCM Agreement, and recommended that the United States bring its measures into conformity with its obligations under that agreement. At the DSB meeting held on 15 August 2019, the United States did not indicate its intention to implement the recommendations and rulings of the DSB in this dispute.

Article 22 of the DSU provides that, in the event of a failure to comply with recommendations and rulings of the DSB within the specified period, the complaining Member may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements, and the DSB shall, upon request, grant such authorization, if no satisfactory compensation has been agreed.

The United States has failed to comply with the recommendations and rulings of the DSB within the RPT provided in the Sequencing Agreement, and no agreement on compensation has been reached.

In response to the United States' continued non-compliance with the DSB's recommendations and rulings, China requests authorization from the DSB to suspend concessions and related obligations at an annual amount of \$2.4 billion.

In considering what countermeasures to take, China follows the principles and procedures set forth in Article 22.3 of the DSU, and in particular, Article 22.3(a). Accordingly, China requests authorization to suspend the application to the United States of concessions or other obligations with respect to goods under the agreements described in Article 22.3(g)(i) of the DSU.

³ See WT/DS437/RW, as modified by WT/DS437/AB/RW.