CHINA – MEASURES IMPOSING ANTIDUMPING DUTIES ON HIGH-PERFORMANCE STAINLESS STEEL SEAMLESS TUBES ("HP-SSST") FROM JAPAN
(AB-2015-4 / DS454)

CHINA – MEASURES IMPOSING ANTIDUMPING DUTIES ON HIGH-PERFORMANCE STAINLESS STEEL SEAMLESS TUBES ("HP-SSST") FROM THE EUROPEAN UNION
(AB-2015-5 / DS460)

EXECUTIVE SUMMARY OF THE THIRD PARTICIPANT SUBMISSION OF THE UNITED STATES OF AMERICA

June 10, 2015

I. ARTICLES 6 AND 17 OF THE *ANTI-DUMPING AGREEMENT*

1. A basic tenet of the AD Agreement, as reflected in various Article 6 provisions, is that the parties to an investigation must be given a full and fair opportunity to see relevant information and to defend their interests. At the same time, the protection of confidential information is essential to the appropriate functioning of an antidumping proceeding. Here, various aspects of those transparency and confidentiality requirements are being challenged before the Appellate Body.

2. Citing Article 6.5 and 17.7 of the AD Agreement, the Panel amended the BCI Procedures to clarify that BCI "shall include information that was previously submitted to MOFCOM as BCI in the anti-dumping investigation at issue in these disputes." The Panel's amendment with respect to BCI information was consistent with Articles 6.5 and 17.7. The United States, however, does not agree with the EU's proposed interpretation of Articles 6.5 and 17.7.

3. The Panel also reached a conclusion as to Article 6.5.1, which requires that an investigating authority must provide or otherwise assure that accepted confidential information is summarized in sufficient detail to permit a reasonable understanding of the substance of the information. The Panel erred in its interpretation of 6.5.1 because the article does not provide that the investigating authority must explain why good cause has been demonstrated for an objective assessment of confidentiality to have occurred.

4. The Panel's interpretation of Article 6.7 and Paragraph 7 of Annex I is under appeal as well. The U.S. view is that while there is no affirmative obligation for an investigating authority to accept all information presented during verification, it is also not entitled to reject information on the sole ground that such information was proffered at verification.

5. Additionally at issue is the Panel's interpretation of Article 6.9, which provides for the disclosure of "essential facts" underlying an investigating authority's antidumping determination to the interested parties. The Panel incorrectly found that China satisfied its obligations under Article 6.9. In the view of the United States, MOFCOM did not sufficiently make available underlying data it used to determine the existence and margin of dumping, including the calculation of the normal value and export price for the respondents.

II. ARTICLE 2 OF THE *ANTI-DUMPING AGREEMENT*

6. The parties made claims under the Article 2 provisions of the AD Agreement. Article 2.2.2 provides that the amounts for SG&A and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. To the extent that MOFCOM relied on sample sales that it had already excluded in other dumping calculations to establish SG&A when information on sales in the ordinary course of trade was available, the United States agrees with the Panel's findings that China acted inconsistently with Article 2.2.2.

III. ARTICLE 3 OF THE *ANTI-DUMPING AGREEMENT*

7. The parties have appealed various aspects of the Panel's analysis of MOFCOM's injury determination. Under Article 3.2, the Panel correctly rejected the arguments of the European

Union and Japan in concluding that an investigating authority may consider the significance of price undercutting by subject imports separately from its determination of price depression or suppression.

8. The Panel's views regarding the analysis of the impact by dumped imports on the domestic industry is inconsistent with Article 3.4. The text of Article 3.4 requires investigating authorities to examine the impact of subject imports on an industry, and not just the state of the industry. An investigating authority must consider whether changes in the state of the industry are the consequences of subject imports and whether subject imports have explanatory force for the industry's performance trends.

9. As to the arguments made by Japan and the EU under Article 3.5, China is incorrect in arguing that the Panel decided on a matter that had not been raised by the complainants. It is clear from the submissions that Japan and the EU both properly submitted these claims to the Panel.