

***European Communities – Definitive Anti-Dumping Measures on  
Certain Iron or Steel Fasteners from China:***

***Recourse to Article 21.5 of the DSU by China***

**(AB-2015-7 / DS397)**

Executive Summary of the  
Third Participant Submission of the  
United States of America

October 1, 2015

1. A basic tenet of the AD Agreement, as reflected in various Article 6 provisions, is that parties to an investigation must be given a full and fair opportunity to see relevant information and defend their interests. At the same time, protection of confidential information is essential to the appropriate functioning of an antidumping proceeding. Various aspects of those transparency and confidentiality requirements are being challenged before the Appellate Body.
2. The EU appealed the Panel's interpretation of Article 6.5. The Panel erred in its interpretation of Article 6.5 because that provision does not provide that an objective assessment for good cause requires that the investigating authority specifically explain its conclusions as to why good cause has been demonstrated.
3. The Panel also reached a conclusion as to Article 6.5.1. Here, the Panel correctly found that obligations of Article 6.5.1 apply only with respect to information submitted by entities explicitly defined as "interested parties" at 6.11 of the AD Agreement.
4. The EU has also appealed the Panel's interpretation of Articles 6.2 and 6.4. The United States considers that the Panel was correct to generally discount the EU's assessment that certain information sought by China was "irrelevant" to the presentation of the Chinese producers' cases because the issue of relevancy, for purposes of Article 6.4, is to be determined from the perspective of the interested parties, not the investigating authority. The Panel also correctly rejected the EU's argument that information is "used" within the meaning of Article 6.4, only if the information is used in the final methodology selected by the authority for calculating the margin of dumping.
5. Also at issue is the Panel's interpretation of Article 6.1.2, which provides that evidence submitted by one "interested party" must be made available to other interested parties. The Panel correctly found this obligation applies only with respect to those entities explicitly defined as "interested parties" by Article 6.11 of the AD Agreement.
6. The Panel also made findings with respect to Article 2.4. While Article 2.4 generally requires that an investigating authority make adjustments for differences that affect price comparability, the United States agrees with the Panel's finding that an investigating authority is not required to make adjustments that reflect distorted production costs and pricing in non-market economies.
7. The EU appealed the Panel's interpretation of Article 2.4.2. The United States agrees with the Panel's finding that the Commission could not rely on 2.4.2 to justify its decision to simply *ignore* certain Chinese export transactions on grounds that they do not match any of the models sold by in the analogue market selected by the Commission. The United States notes the AD Agreement explicitly provides for situations where there are mismatches in product types on the export and normal value sides. Article 2.4 provides for an investigating authority to take non-matching models into account by making "necessary adjustments to eliminate" the elements "that affect price comparability." Article 2.2 provides that an investigating authority may construct the export price on the basis of costs of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.