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CHINA - ANTI-DUMPING MEASURES ON STAINLESS STEEL PRODUCTS FROM JAPAN

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY JAPAN

The following communication, dated 19 August 2021, from the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the establishment of a panel with respect to the measures by the People's Republic of China ("China") imposing anti-dumping duties on stainless steel products from Japan. Japan submits this request pursuant to Articles 4.7 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 17.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement").

On 11 June 2021, Japan requested consultations with China¹. Japan and China held consultations on 19 July 2021, with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

China's measures are set forth in the Ministry of Commerce ("MOFCOM") Announcement No. 9 of 2019² and Announcement No. 31 of 2019³, including any and all annexes and amendments thereto, and are also identified in China's semi-annual report for the period 1 July 2019 through 31 December 2019 submitted to the WTO Committee on Anti-dumping Practices.⁴

In the above public announcements and semi-annual report, China has continuously stated the import products subject to the anti-dumping duties to be "stainless steel billet and hot-rolled stainless steel plate (coil)", which is an English translation of "不锈钢钢坯和不锈钢热轧板/卷" (emphasis added). However, the detailed descriptions of the subject import products in its announcements, such as "[h]ot-rolled stainless steel plates/coils are made of stainless steel billets after the stainless steel billets undergo hot rolling and other processes, and they are made into coils or plates, regardless of their width and thickness",⁵ indicate that the word "billets" refers to stainless steel "slabs" (in Chinese, "板坯") instead of "billets" or "钢坯". This inference can be made because the products from which hot-rolled stainless steel plates/coils are made are slabs and not billets. Japan therefore uses the word "slabs" when it refers to the product corresponding to "钢坯" in its communications/submissions in the present dispute, but in no way intends to exclude any of the

¹ WT/DS601/1, G/L/1389, G/ADP/D136/1, circulated on 15 June 2021.

² 商务部公告2019年第9号 关于对原产于欧盟、日本、韩国和印度尼西亚的进口不锈钢钢坯和不锈钢热轧板/卷反倾销调查初步裁定的公告 (MOFCOM Announcement No.9 of 2019 on the Preliminary Ruling of Anti-dumping Investigation into Imports of Stainless Steel Billets and Hot-rolled Stainless Steel Plates/Coils Originating in the EU, Japan, the Republic of Korea and Indonesia), available at <http://www.mofcom.gov.cn/article/b/c/201903/20190302845525.shtml>

³ 商务部2019年第31号公告 关于对原产于欧盟、日本、韩国和印度尼西亚的进口不锈钢钢坯和不锈钢热轧板/卷反倾销最终裁定的公告 (MOFCOM Announcement No. 31 of 2019 on Final Ruling of Anti-dumping Investigation into Imports of Stainless Steel Billets and Hot-rolled Stainless Steel Plates/Coils Originating in the EU, Japan, the Republic of Korea and Indonesia), available at <http://www.mofcom.gov.cn/article/b/e/201907/20190702883527.shtml>

⁴ G/ADP/N/335/CHN, dated 21 April 2020.

⁵ English translation of the product description in MOFCOM Announcement No. 31 of 2019 ("不锈钢热轧板/卷是由不锈钢钢坯经过热轧等工序后制得，呈卷状或板状，不分宽度和厚度") (emphasis added), available at <http://english.mofcom.gov.cn/article/policyrelease/buwei/201908/20190802887274.shtml>

subject import products from this dispute.⁶

Japan considers that these measures are inconsistent with China's obligations under the following provisions of the GATT 1994 and the Anti-Dumping Agreement:

1. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because China's injury determination was not based on positive evidence and did not involve an objective examination of the effect of the imports under investigation ("subject imports") on prices in the domestic market for like products. Specifically, in its price effects analysis, China acted inconsistently with Articles 3.1 and 3.2 of the Anti-Dumping Agreement due to, *inter alia*, the following reasons:
 - (a) China failed to conduct proper analyses with respect to three different products (i.e. stainless steel slabs, hot-rolled coils, and hot-rolled plates) included within the subject imports and the like domestic products, the different series of steel grades based on the products' chemical compositions, and the subject imports as a whole. China improperly concluded that the subject imports as a whole had a significant effect on the prices of the like domestic products as a whole, but reached this conclusion erroneously, as China failed to appropriately consider the differences among the three distinct products included in the subject imports and the like domestic products. China also failed to appropriately consider, *inter alia*, the different series of steel grades. Furthermore, China failed to properly analyze the price trends of the subject imports and the like domestic products; and
 - (b) China failed to provide any reasonable explanation and analysis of how and to what extent the prices of the like domestic products were affected, given the situation that the prices of subject imports were generally significantly higher than those of the like domestic products.
2. Articles 3.1 and 3.3 of the Anti-Dumping Agreement because China's cumulative assessment of the effects of subject imports from the European Union, Japan, Indonesia, and Korea was inappropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic products, due to, *inter alia*, the following reasons:
 - (a) The product mixes were different, both in terms of the proportion of three different products (i.e. stainless steel slabs, hot-rolled coils, and hot-rolled plates) and the proportion of different series of steel grades based on their chemical compositions, (i) between the subject imports from different countries and (ii) between the subject imports and the like domestic products; and
 - (b) The price levels were different between the subject imports from different countries and between the subject imports and the like domestic products.
3. Articles 3.1 and 3.4 of the Anti-Dumping Agreement because China's analysis of the impact of the allegedly dumped imports on the domestic industry:
 - (a) failed to conduct an objective examination, based on positive evidence, of the impact of subject imports on the domestic industry based on the volume of such imports and their effect on prices;
 - (b) failed to conduct an objective examination, based on positive evidence, of all relevant economic factors and indices having a bearing on the state of the domestic industry; and
 - (c) failed to provide a reasoned and adequate explanation of the determination of material injury to the domestic industry by failing to objectively determine the relative

⁶ Japan also notes that the above public announcements (e.g. MOFCOM Announcement No. 31 of 2019) refers to the HS codes for the subject import products, "72189100, 72189900, 72191100, 72191200, 72191312, 72191319, 72191322, 72191329, 72191412, 72191419, 72191422, 72191429, 72192100, 72192200, 72192300, 72192410, 72192420, 72192430, 72201100 and 72201200", which includes 72189100 (covering stainless steel slabs) as well as 72189900 (covering stainless steel billets).

importance and weight to be attached to relevant economic factors and indices, and improperly disregarding the majority of those factors and indices indicating that the domestic industry did not suffer material injury.

4. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because:
 - (a) China failed to demonstrate, based on positive evidence and an objective examination, that the subject imports were, through the effects of dumping, as set forth in Articles 3.2 and 3.4, causing injury to the domestic industry. In particular, China determined that the allegedly dumped imports were causing injury based on its flawed analysis of price effects under Article 3.2 and its flawed analysis of impact under Article 3.4;
 - (b) China failed to demonstrate the required causal relationship between the subject imports and the injury to the domestic industry based on an objective examination of all relevant evidence before the authorities, including, *inter alia*, the fact that the allegedly dumped imports had limited market shares in the Chinese market; and
 - (c) China failed to conduct an objective examination, based on positive evidence, of factors other than the subject imports which were at the same time injuring the domestic industry, and therefore improperly attributed the injury caused by those other factors to the subject imports. The other factors include, *inter alia*, rise of raw material nickel prices, strict environmental protection, excessive stainless steel production capacity and competition with other domestic producers.
5. Articles 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement because China's use of cumulative assessment in its analyses of the effect of allegedly dumped imports on prices, the impact of the allegedly dumped imports on the domestic industry, and the causal relationship between the allegedly dumped imports and the injury to the domestic industry, respectively, was inconsistent with Article 3.3 of the Anti-Dumping Agreement.
6. Article 4.1 of the Anti-Dumping Agreement:
 - (a) because China, in defining the domestic industry, relied on sales volume of slabs instead of production volume of slabs, and did not define the domestic industry as domestic producers whose output of the products constitutes a major proportion of the total domestic production of those products; and
 - (b) in conjunction with Article 3.1 of the Anti-Dumping Agreement, because China improperly defined the domestic industry and, as a result, failed to base its determination on positive evidence and conduct an objective examination of the facts with respect to the domestic industry producing the like products.
7. Articles 6.5 and 6.5.1 of the Anti-Dumping Agreement because:
 - (a) China treated the information provided by the applicant and the domestic industry as confidential information without good cause shown; and
 - (b) China failed to require the applicant and the domestic industry either (i) to furnish non-confidential summaries of confidential information which are in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence; or (ii) to provide explanations as to why they were not able to furnish such summaries.
8. Article 6.9 of the Anti-Dumping Agreement because China failed to inform the interested parties of the essential facts under consideration which formed the basis for the decision to impose definitive anti-dumping measures, including, *inter alia*, the essential facts underlying:
 - (a) the definition of the products under investigation, (b) the definition of the domestic industry, and (c) the determinations of injury and causation.
9. Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement because China failed to provide, in sufficient detail, the findings and conclusions reached on all issues of fact and law considered

material by the investigating authorities, as well as all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures, including, *inter alia*, with respect to (a) the definition of the products under investigation, (b) the definition of the domestic industry, and (c) the determinations of injury and causation.

China's measures imposing anti-dumping duties on stainless steel slabs, hot-rolled coils and hot-rolled plates from Japan are also inconsistent with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 as a consequence of the inconsistencies with the Anti-Dumping Agreement described above.

China's measures also nullify or impair the benefits accruing to Japan directly or indirectly under the cited agreements.

Accordingly, Japan respectfully requests that, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the Anti-Dumping Agreement, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

Japan asks this request to be placed on the Agenda for the meeting of the Dispute Settlement Body to be held on 30 August 2021.
