RESTRICTED

WT/DSB/M/326

18 February 2013

(13-0843) Page: 1/3

Dispute Settlement Body
30 November 2012

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 30 NOVEMBER 2012

Chairman: Mr. Shahid Bashir (Pakistan)

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

A. Implementation of the recommendations of the DSB

1.1. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 16 November 2012, the DSB had adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report, pertaining to the dispute on: "China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States". He then invited China to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

1.2. The representative of China said that, on 16 November 2012, the DSB had adopted the Appellate Body Report and the Panel Report in this dispute. Since no regular DSB meeting was scheduled within 30 days after the date of adoption of the Appellate Body Report and the Panel Report, in accordance with Article 21.3 of the DSU, China wished to inform the DSB at the present meeting, which was a special DSB meeting, of its intention to implement the DSB's recommendations and rulings in this dispute in a manner that respected its WTO obligations. China would need a reasonable period of time in which to do so and stood ready to discuss this matter with the United States.

1.3. The representative of the United States said that his country thanked China for its statement made at the present meeting indicating that it intended to implement the DSB's recommendations and rulings in this dispute. China's anti-dumping and countervailing duty measures on GOES from the United States had been and continued to be of significant concern. The United States, therefore, looked forward to China moving promptly to bring its measures into compliance with its

obligations. The United States stood ready to discuss with China, under Article 21.3(b) of the DSU, a reasonable period of time for implementation of the DSB's recommendations and rulings.

1.4. The DSB took note of the statements, and of the information provided by China regarding its intentions in respect of implementation of the DSB's recommendations.

2 UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES ON CERTAIN PRODUCTS FROM CHINA

A. Request for the establishment of a panel by China (WT/DS449/2)

2.1. The Chairman drew attention to the communication from China contained in document WT/DS449/2, and invited the representative of China to speak.

2.2. The representative of China said that her country regrettably found it necessary to request the establishment of a panel in this dispute. On 17 September 2012, China had requested consultations with the United States. These consultations had been held on 5 November 2012, with a view to reaching a mutually satisfactory solution. While the consultations had clarified certain issues between the parties, they had failed to resolve the dispute. Since 2006, the United States had launched over 30 countervailing duty investigations against Chinese products, affecting more than US$7.3 billion in total. The Government of China and Chinese exporters had consistently maintained that those investigations were unlawful because the US countervailing duty laws did not apply to countries that the United States designated as non-market economies. Those views had been confirmed by the decision of the US Court of Appeals for the Federal Circuit in the Georgetown Steel case and the Federal Circuit's decision of December 2011 in the GPX case. However, in March 2012, the United States had enacted a new law, namely "An Act to Apply the Countervailing Duty Provisions of the Tariff Act of 1930 to Non-Market Economy Countries, and For Other Purposes" ("P.L. 112-99"), which provided the US Department of Commerce ("USDOC") with statutory authority to apply countervailing duties to imports from non-market economy countries. The law stated that this statutory authority applied retroactively to 2006, when USDOC had first begun applying countervailing duties to Chinese products in contravention of existing US law. In contrast, the USDOC's legal authority to identify and avoid double remedies did not apply retroactively to 2006, and it applied only to "investigations and reviews initiated … on or after the date of the enactment of this Act", i.e. on or after 13 March 2012. China's claims were clear in the request for the establishment of a panel (WT/DS449/2). China would not repeat those claims, but would only highlight some elements. First, the P.L. 112-99 was inconsistent with Article X of the GATT 1994. The United States was not administering its trade remedy laws "in a uniform, impartial and reasonable manner", and some provisions of the US law had been enforced prior to their official publication. Moreover, the absence of legal authority to identify and avoid double remedies in respect of investigations or reviews, initiated between 20 November 2006 and 13 March 2012, had prevented the US authorities from ensuring that the imposition of countervailing duties was consistent with Articles 10, 15, 19, 21 and 32 of the SCM Agreement and Article VI of the GATT 1994, and from ensuring that the imposition of anti-dumping duties in the associated anti-dumping investigations and reviews was consistent with Articles 9 and 11 of the Anti-Dumping Agreement and Article VI of the GATT 1994. Therefore, China respectfully requested that the DSB establish a panel, with standard terms of reference as set forth in Article 7.1 of the DSU, to examine this matter.

2.3. The representative of the United States said that his country was disappointed that China had requested the establishment of a panel on this matter and that the legislative measure at issue in this dispute, Public Law 112-99, was fully consistent with US WTO obligations. It had been enacted in an effort to clarify US law and eliminate any doubt about the authority of the US Commerce Department to take action consistent with the recommendations and rulings of the DSB in connection with DS379. The United States had acted in good faith in enacting Public Law 112-99, and continued to believe that it was consistent with its WTO obligations. Public Law 112-99 had clarified and confirmed US law regarding the application of the countervailing duty remedy to non-market economies, and had clarified and confirmed that the US Commerce Department possessed domestic legal authority to take action consistent with the Appellate Body's findings with respect to the so-called "double remedy" issue. As China was aware, the 19 December 2011 decision of the US courts in the "GPX case" had never become final and effective under US law. China was assuming that the court's decision carried a weight under the US legal system that it did not. With respect to the countervailing duty and anti-dumping proceedings at issue in this dispute, the

United States had conducted the proceedings in a manner consistent with the WTO Agreement. The WTO Agreements permitted Members to levy a countervailing duty to offset injurious subsidies bestowed by another Member on the manufacture, production, or export of goods in or from that Member's territory. For those reasons, the United States was not in a position to agree to the establishment of a panel.

2.4. The DSB took note of the statements and agreed to revert to this matter.

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