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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS471]

WTO Dispute Settlement Proceeding Regarding Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that the People’s Republic of China (“China”) has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”). That request may be found at www.wto.org contained in a document designated as WT/DS471/5. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before May 2, 2014, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to www.regulations.gov, docket number USTR-2014-0001. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: J. Daniel Stirk, Associate General Counsel, or Mayur Patel, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-3150.

SUPPLEMENTARY INFORMATION: In accordance with Section 127(b) of the Uruguay Round Agreements Act (“URAA”) (19 U.S.C. 3537(b)(1)), USTR is providing notice that a dispute settlement panel has been established pursuant to the WTO Dispute Settlement Understanding (“DSU”). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by China

In its request for the establishment of a panel, China alleges that the Department of Commerce (“Commerce”) acted inconsistently with various U.S. WTO obligations in a number of U.S. antidumping proceedings. The proceedings concern a number of imported products from China, including certain coated paper suitable for high-quality print graphics using sheet-fed presses (coated paper), certain oil country tubular goods (OCTG), high pressure steel cylinders (steel cylinders), polyethylene terephthalate film, sheet, and strip (PET film), aluminum extrusions, certain frozen and canned warmwater shrimp (shrimp), certain new pneumatic off-the-road tires (tires), crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), diamond sawblades and parts thereof (sawblades), multilayered wood flooring (flooring), narrow woven ribbons with woven selvedge (ribbons), polyethylene retail carrier bags (bags), and

wooden bedroom furniture (furniture).

With respect to the antidumping measures on coated paper, OCTG, and steel cylinders, China challenges the application by Commerce in investigations of what China describes as a “targeted dumping methodology” and the use of “zeroing” in connection with the application of such methodology. China’s challenge purports to include Commerce’s final determinations in the antidumping investigations of these products, any modification, replacement, or amendment of such final determinations, and “any closely connected, subsequent measures” that involve the “targeted dumping methodology.” China is asserting that the application of the “targeted dumping methodology” is inconsistent with U.S. obligations under Article 2.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement).

With respect to the antidumping measure on PET film, China challenges Commerce’s application in an administrative review of what China describes as a “targeted dumping methodology” and the use of “zeroing” in connection with the application of such methodology. China’s challenge purports to include Commerce’s final determination in the antidumping duty administrative review of PET film, any modification, replacement, or amendment of such final determination, and “any closely connected, subsequent measures” that involve the “targeted dumping methodology.” China is asserting that the use of the “targeted dumping methodology” in the review is inconsistent with U.S. obligations under Article 9.3 of the AD Agreement and Article VI:2 of the General Agreement on Tariffs and Trade 1994.

With respect to the antidumping measures on aluminum extrusions, coated paper, shrimp, tires, OCTG, solar cells, sawblades, steel cylinders, wood flooring, ribbons, bags, PET film, and furniture, China challenges Commerce's application in investigations and administrative reviews of what China describes as a "single rate presumption for non-market economies." China's challenge purports to include certain of Commerce's preliminary determinations and final determinations, any modification, replacement, or amendment of such final determinations, and "any closely connected, subsequent measures" that involve the application of the "single rate presumption." China also challenges what China describes as the "single rate presumption" "as such," and alleges that it has been consistently applied pursuant to the regulation set forth in 19 C.F.R. § 351.107(d), Import Administration Policy Bulletin Number 05.1 of 5 April 2005, and the Import Administration Antidumping Manual, 2009, Chapter 10. China is asserting its claims with respect to the "single rate presumption for non-market economies" under Articles 6.10, 9.2, and 9.4 of the AD Agreement.

With respect to the antidumping measures on aluminum extrusions, coated paper, shrimp, tires, OCTG, solar cells, sawblades, steel cylinders, wood flooring, ribbons, bags, PET film, and furniture, China challenges Commerce's application in investigations and administrative reviews of what China describes as a "NME-wide methodology," which, according to China, includes as "features" the "failure to request information," the "failure to provide rights of defense," and the "recourse to facts available." China's challenge purports to include certain of Commerce's preliminary determinations and final determinations, any modification, replacement, or amendment of such final determinations, and "any closely connected, subsequent measures" that involve the application of the "NME-wide methodology." China is asserting its claims with

respect to the “NME-wide methodology” under Articles 6.1, 6.8 and Annex II, and Article 9.4 of the AD Agreement.

Finally, with respect to the antidumping measures on aluminum extrusions, coated paper, shrimp, tires, OCTG, solar cells, sawblades, steel cylinders, wood flooring, ribbons, bags, PET film, and furniture, China challenges Commerce’s application in investigations and administrative reviews of what China describes as “adverse facts available.” China’s challenge purports to include certain of Commerce’s preliminary determinations and final determinations, any modification, replacement, or amendment of such final determinations, and “any closely connected, subsequent measures” that involve the application of what China describes as the “NME-wide methodology.” China also challenges the use of what China describes as “adverse facts available” “as such,” and alleges that it has been consistently applied pursuant to section 776(b) of the Tariff Act of 1930, codified at 19 U.S.C. § 1677e(b) and regulations set forth in 19 C.F.R. § 351.308. China is asserting its claims with respect to “adverse facts available” under Article 6.8 and Annex II of the AD Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number USTR-2014-0001. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR-2014-0001 on the home page and click “search”. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Comment Now!” (For further information on using the www.regulations.gov website, please consult the resources provided on the website by clicking on “How to Use This Site” on the left side of the home page.)

The www.regulations.gov website allows users to provide comments by filling in a “Type Comments” field, or by attaching a document using an “Upload File” field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comments” field.

A person requesting that information contained in a comment that he/she submitted, be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter:

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. § 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR-2014-0001, accessible to the public at www.regulations.gov.

The public file will include non-confidential comments received by USTR from the public regarding the dispute. The following documents will be made available to the public at www.ustr.gov: the U.S. submissions, any non-confidential summaries or submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute.

The report of the panel in this proceeding and, if applicable, the report of the Appellate Body, will be available on the website of the World Trade Organization, at www.wto.org. Comments open to public inspection may be viewed at www.regulations.gov.

Juan Millan,

Assistant United States Trade Representative

for Monitoring and Enforcement

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