

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

**(DS601)**

**ORAL STATEMENT OF THE UNITED STATES OF AMERICA  
AT THE THIRD-PARTY SESSION**

**June 30, 2022**

Mr. Chairperson, Members of the Panel,

1. The United States appreciates the opportunity to appear before you today and provide our views as a third party in this dispute.

2. We will briefly address two of themes identified by the panel: (1) definition of the domestic industry and (2) price effects. With respect to price effects, we will address what is required by the authority under Articles 3.1 and 3.2 of the Anti-Dumping Agreement to ensure price comparability between the domestic and subject imported products.

**I. Definition of the Domestic Industry**

3. The United States agrees with Japan that Article 4.1 must be read in conjunction with Article 3.1. Article 4.1 of the AD Agreement provides that, with certain defined exceptions, “the term ‘domestic industry’ shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.”

4. Article 4.1 establishes that the “domestic industry” can be defined as either (1) the “domestic producers as a whole of the like products,” i.e., all domestic producers, or (2) a subset of domestic producers “whose collective output of the products constitutes a major proportion of the total domestic production” of the like products. Article 4.1 of the AD Agreement does not require that all domestic producers be included in the domestic industry, nor does it articulate a minimum limit on the percentage of domestic production that must be included to constitute a “major proportion” of the total domestic production of those products.

5. Although undefined in the AD Agreement, the term “major proportion” must be interpreted in the context of Article 3.1 of the AD Agreement. Article 3.1 sets forth two overarching obligations that apply to multiple aspects of an authority’s injury determination. The first overarching obligation is that the injury determination be based on “positive evidence.” The second obligation is that the injury determination involves an “objective examination” of the volume of the dumped imports, their price effects, and their impact on the domestic industry. Under this obligation, the domestic industry is to be investigated in an unbiased manner that does not favor the interests of any interested party in the investigation. How an authority chooses to define the domestic industry has repercussions throughout the course of the injury analysis and determination; thus, the overarching obligations of Article 3.1 necessarily extend to an authority’s definition of the domestic industry.

6. As indicated in our submission, the Panel should consider whether the authority, consistent with Article 3.1, defined the domestic industry in a fair and unbiased manner. A flawed definition of the domestic industry can distort an authority’s material injury analysis. For a material injury determination to be based on “positive evidence and involve an objective examination,” the authority must rely upon a properly defined domestic industry to perform the analysis. A proper definition of the domestic industry is critical to ensuring an accurate and unbiased injury analysis; an improper definition could risk introducing a distortion to the injury analysis.

## **II. Comparability Under Articles 3.1 and 3.2 of the Anti-Dumping Agreement**

7. The United States does not agree with China’s legal interpretation Article 3.2, as set out in paragraphs 121 and 184, which limits the obligation to ensure price comparability.

8. As indicated in our submission, the United States interprets Articles 3.1 and 3.2 of the Anti-Dumping Agreement as requiring the authority to ensure comparability between the domestic and subject imported products for which prices are being compared and to make adjustments where required to reflect any material differences.<sup>1</sup> The objective of such adjustments is to ensure that whatever price differentials arise from a comparison of domestic and imported goods result from price effects, and not merely from differences in the products or transactions being compared, absent the necessary adjustments to control and adjust for relevant differences in product characteristics.<sup>2</sup>

### **III. Conclusion**

9. This concludes the U.S. oral statement. The United States would like to thank the Panel for its consideration of our views and looks forward to responding to the Panel’s questions in writing.

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<sup>1</sup> See, e.g., *China – GOES (AB)*, para. 200. See also, e.g., *China – Autos (Panel)*, para. 7.277.

<sup>2</sup> See, e.g., *China – Autos (Panel)*, para. 7.256.