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CHINA - SUBSIDIES TO PRODUCERS OF PRIMARY ALUMINIUM

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

The following communication, dated 12 January 2017, from the delegation of the United States to the delegation of China and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Articles 7 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") (to the extent that Article 30 incorporates Article XXII of the GATT 1994) with regard to subsidies that China provides to Chinese producers of primary aluminum.¹ China appears to be causing adverse effects to the interests of the United States, including serious prejudice to the interests of the United States, through the use of these subsidies.

China has been providing subsidies benefitting Chinese producers of primary aluminum over the period 2007 to the present. These measures include but are not limited to the following:

- (1) China provides loans and other financing to primary aluminum producers through banks that are government agencies or entities, public bodies,² or private bodies.³ China provides these loans and other financing through transactions involving the following banks and aluminum producers, among others:
 - (a) China Hongqiao Group Co., Ltd. ("Hongqiao") received loans from Agricultural Bank of China, Bank of China, China Bohai Bank, China Construction Bank, China CITIC Bank, China Guangfa Bank, China Merchants Bank, China Minsheng Bank, Hengfeng Bank, Industrial and Commercial Bank of China, Ping An Bank, and Shanghai Pudong Development Bank.
 - (b) Aluminum Corporation of China Limited ("Chalco") received loans from Agricultural Bank of China, Bank of China, Bank of Communications, China Construction Bank, China Development Bank, China Everbright Bank, China Merchants Bank, Export-Import Bank of China, China Guangfa Development Bank, Industrial and Commercial Bank of China, and Industrial Bank.
 - (c) Shanghai Shenhua Aluminum Foil Co. Ltd. ("Shenhua") received loans from Agricultural Bank of China, Bank of China, Bank of Communications, Bank of Jiangsu, China Bohai Bank, China CITIC Bank, China Construction Bank, China Development Bank, China Everbright Bank, China Guangfa Bank, China Merchants Bank, China Minsheng Bank, Hua Xia Bank, Huayi Bank, Industrial and Commercial

¹ In this request, "primary aluminum" (also known as electrolytic aluminum) refers to aluminum produced through the electrolytic reduction of alumina.

² Within the meaning of SCM Agreement Article 1.1(a)(1).

³ Within the meaning of SCM Agreement Article 1.1(a)(1)(iv). China entrusts or directs each private body, including certain private banks, to provide loans and other financing.

Bank of China, Industrial Bank, Ping An Bank, Shanghai Pudong Development Bank, and Shenzhen Development Bank.

- (d) Henan Zhongfu Industrial Co., Ltd. ("Zhongfu") received loans from Agricultural Bank of China, Bank of China, Bank of Communications, China Bohai Bank, China CITIC Bank, China Construction Bank, China Development Bank, China Guangfa Bank, China Merchants Bank, China Minsheng Bank, Hua Xia Bank, Industrial and Commercial Bank of China, and Shenzhen Development Bank.
- (e) State Power Investment Corporation ("State Power")⁴ received loans from Agricultural Bank of China, Bank of China, Bank of Communications, China CITIC Bank, China Construction Bank, China Development Bank, China Everbright Bank, China Guangfa Bank, China Merchants Bank, China Merchants Bank, China Minsheng Bank, Export-Import Bank of China, Industrial and Commercial Bank of China, Industrial Bank, and Shanghai Pudong Development Bank.

Loans provide a benefit to each recipient because they are provided to that recipient at interest rates below those which the recipient otherwise would have paid on a comparable commercial loan which the recipient could actually have obtained on the market.

- (2) China, through producers and resellers of coal,⁵ provides coal to Hongqiao. This provision of coal provides a benefit to Hongqiao because it is provided to the recipient for less than adequate remuneration.
- (3) China, through Binzhou Gaoxin,⁶ provides alumina to Hongqiao. This provision of alumina provides a benefit to Hongqiao because it is provided to the recipient for less than adequate remuneration.
- (4) China, through Binzhou Gaoxin,⁷ provides electricity to Hongqiao. This provision of electricity provides a benefit to Hongqiao because it is provided to the recipient for less than adequate remuneration.⁸

The subsidies are specific with the meaning of Articles 2.1(a) and (c) of the SCM Agreement because the relevant granting authorities or the legislation pursuant to which the granting authorities operate explicitly limit access to the aluminum industry or the industry producing electricity, or are specific in fact for reasons including their use by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts to certain enterprises, or the manner in which the granting authorities have exercised their discretion, or are specific within the meaning of Article 2.2 of the SCM Agreement because the subsidies are limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority.

The United States is concerned that China's subsidies appear to be causing adverse effects to the interests of the United States within the meaning of Article 5(c) of the SCM Agreement. In particular, China's subsidies, operating separately or collectively, appear to be inconsistent with the following provisions:

⁴ China Power Investment Corporation became State Power Investment Corporation in 2015.

⁵ Whether a government agency or entity, a public body within the meaning of SCM Agreement Article 1.1(a)(1), or a private body within the meaning of SCM Agreement Article 1.1(a)(1)(iv). If a private body, China entrusts or directs the private body to provide coal.

⁶ Whether a government agency or entity, a public body within the meaning of SCM Agreement Article 1.1(a)(1), or a private body within the meaning of SCM Agreement Article 1.1(a)(1)(iv). If a private body, China entrusts or directs the private body to provide alumina.

⁷ Whether a government agency or entity, a public body within the meaning of SCM Agreement Article 1.1(a)(1), or a private body within the meaning of SCM Agreement Article 1.1(a)(1)(iv). If a private body, China entrusts or directs the private body to provide electricity.

⁸ In the alternative, Binzhou Gaoxin foregoes or does not collect revenue that is otherwise due in providing electricity to Hongqiao. This foregoing or non-collection of revenue provides a benefit to the recipient because the seller does not charge the recipient at the rate it otherwise charges electricity purchasers.

- (1) Article 6.3(a) because the subsidies are causing or threatening to cause serious prejudice to the interests of the United States through displacement and impedance of U.S. imports of primary aluminum into the Chinese market.
- (2) Article 6.3(b) because the subsidies are causing or threatening to cause serious prejudice to the interests of the United States through displacement and impedance of U.S. imports of primary aluminum into all third country markets.
- (3) Article 6.3(c) because the subsidies are causing or threatening to cause serious prejudice to the interests of the United States through price suppression, price depression, or lost sales of primary aluminum in the same market, including the world market, Chinese market, and all third country markets.
- (4) Article 6.3(d) because the subsidies are causing or threatening to cause serious prejudice to the interests of the United States through an increase in the world market share of China of primary aluminum as compared to the average share China had during the previous period of three years and this increase follows a consistent trend over a period when subsidies have been granted.

The United States also is concerned that the measures appear to be inconsistent with Article XVI:1 of the GATT 1994.

Attached please find the statement of available evidence, pursuant to Article 7.2 of the SCM Agreement.

We look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.

Statement of Available Evidence

1. The measures listed in items (1)-(4) above.
2. U.S.-China Joint Fact Sheet on the 27th U.S.-China Joint Commission on Commerce and Trade, United States Department of Commerce (January 11, 2017).
3. U.S. Fact Sheet for the 27th U.S.-China Joint Commission on Commerce and Trade, Office of the United States Trade Representative (November 23, 2016).
4. Fact Sheet: U.S.-China Economic Relations, The White House (September 4, 2016).
5. 2016 U.S.-China Strategic and Economic Dialogue U.S. Fact Sheet – Economic Track, U.S. Department of the Treasury (June 7, 2016).
6. U.S.-China Joint Fact Sheet on the 26th U.S.-China Joint Commission on Commerce and Trade, United States Department of Commerce (December 21, 2015).
7. U.S. Fact Sheet: 26th U.S. China Joint Commission on Commerce and Trade, United States Department of Commerce (November 23, 2015).
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10. Opinion on Further Improving Financial Services Work to Support Energy Conservation and Emissions Reduction and the Elimination of Outdated Capacity, People's Bank of China, China Banking Regulatory Commission, Yin Fa [2010] No. 170 (May 28, 2010).
11. Guiding Opinion on the Banking Sector Further Improving the Work of Serving Development of the Real Economy, China Banking Regulatory Commission, Yin Jian Fa [2015] No. 25 (February 18, 2016).
12. Several Opinions on Supporting the Stable Expansion, Structural Adjustment, and Increased Efficiency of Industry, People's Bank of China, National Development and Reform Commission, Ministry of Industry and Information Technology, Ministry of Finance, Ministry of Commerce, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission Yin Fa [2016] No. 42 (February 14, 2016).
13. Speeding Up Strategic Transformation, Comprehensively Increasing Services for National Strategic Capability, China Construction Bank (August 27, 2015).
14. Agricultural Bank of China Central Party Committee Report Regarding the Status of Inspection Rectifications, Central Disciplinary Commission Website (April 25, 2016).
15. Industrial and Commercial Bank of China Central Party Committee Report Regarding the Status of Inspection Rectifications, Central Disciplinary Commission Website (April 26, 2016).
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