UNITED STATES – CERTAIN METHODOLOGIES AND THEIR APPLICATION TO ANTI-DUMPING PROCEEDINGS INVOLVING CHINA

(DS471)

CLOSING STATEMENT OF THE UNITED STATES OF AMERICA AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL

July 16, 2015

Mr. Chairperson, members of the Panel:

1. The United States has just a few short closing comments. This dispute, like all WTO disputes, is about the meaning of the covered agreements and the content of the obligations that WTO Members have accepted and agreed to in those agreements, including China's Protocol of Accession. Having accepted those obligations when it acceded to the WTO, China now seeks to alter the meaning of the covered agreements by departing from the accepted rules of treaty interpretation and by inventing obligations found nowhere in the text of any covered agreement, including, *inter alia*, by reading out of the AD Agreement[1] an entire sentence.

2. During the course of this proceeding, including in its first written submission, in its opening statement, and when pressed during the back-and-forth of the question and answer session, China has utterly failed to offer the Panel anything that approaches a plausible interpretation of the second sentence of Article 2.4.2 of the AD Agreement; one that is rooted in the ordinary meaning of the terms of that provision, in their context, and in light of the object and purpose of the AD Agreement. China nowhere even suggests that the prohibition on zeroing it asks the Panel to import into the second sentence of Article 2.4.2 could be based on the terms of that provision itself. China attacks the U.S. application of, *inter alia*, the terms "pattern," "significantly," and "explanation," all in an effort, not to give meaning to the terms of the second sentence of Article 2.4.2, but to deprive that provision of any meaning whatsoever.

3. China likewise has failed to establish that what it calls the "Single Rate Presumption" even exists as a "norm of general and prospective application." China continues to ignore the particular deficiencies of each piece of evidence it has put forward. Contrary to China's suggestion, a bad piece of evidence does not become more probative when it is combined with another bad piece of evidence. In short, nothing China has put forward supports its contention that the so-called "Single Rate Presumption" will be generally applied in the future. Accordingly, China has failed to establish the existence of a measure, let alone a measure that breaches the AD Agreement.

4. China's "as applied" claims related to the so-called "Single Rate Presumption" are equally deficient. China does not get to take a shortcut in this dispute by simply citing to prior panel and Appellate Body reports that did not involve the particular facts before this Panel. China must prove the existence of a breach in this dispute, and it cannot do so.

5. China's "as such" claims against what it calls the "Use of Adverse Facts Available norm" fail as well, because there is no norm, and China's own description of the norm it seeks to challenge remains incoherent, regardless of the shifting formulations that China has put forward during this dispute. Furthermore, the various tables that China has put before the Panel are not evidence and do not come anywhere near what would be necessary to establish a *prima facie* case that Commerce acted – or will act – inconsistently with any provision of the AD Agreement.

6. Critically, China's various proposed interpretations – which appear to shift whenever they are subjected to scrutiny – are not supported by the text of AD Agreement. For example,

[1] *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

China cannot point to anything in Article 6.1 of the AD Agreement that substantively dictates the types of information an investigating authority must seek, for the simple reason that that provision only requires the investigating authority to give procedural notice of what information is being requested. Moreover, the precise arguments China advances in this dispute have been rejected by the Appellate Body – quite recently, in fact – in *US – Carbon Steel (India)*. China's claims fail because, in the challenged determinations, Commerce evaluated all available information on the record and appropriately considered the non-cooperation of the entity when selecting from among the available facts. That is entirely consistent with the obligations to which Members agreed in the AD Agreement.

7. Pursuant to the DSU, this Panel's charge is to make an objective assessment of the matter before it and to clarify the *existing* provisions of the covered agreements in accordance with customary rules of interpretation of public international law. At the beginning and at the end of the panel's analysis is the text of the covered agreements. The interpretations China proposes, however, are entirely disconnected from the text of those agreements, and thus cannot be accepted.

8. The United States recognizes that the Panel is only at the beginning of its work, and we hope that our first written submission and our presentation over these past few days have been helpful for the Panel. We look forward to responding in writing to the Panel's questions and, in doing so, we will endeavor to bring clarity and understanding to the many complex issues in this dispute. Ultimately, we seek to aid the Panel in arriving at the correct conclusions, based on proper interpretations of the covered agreements. We are confident that, if we are successful in that effort, the Panel will agree that China's claims lack any merit and should be dismissed.

9. Once again, the United States thanks the Panel members, and the Secretariat staff, for your time and attention to this matter.