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

UNITED STATES – DEFINITIVE ANTI-DUMPING AND
COUNTERVAILING DUTIES ON CERTAIN PRODUCTS FROM CHINA
WT/DS379

JULY 8, 2009

Mr. Chairman, members of the Panel:

1. The United States has only a few brief 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 by joining the WTO. China 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. At the same time, China seeks to avoid its own obligations to engage in consultations prior to initiating panel proceedings, and to have its exports subjected to the rules-based trade remedy disciplines of the AD and SCM Agreements.

2. In short, having agreed to join the WTO and submit itself to the rules and obligations of the covered agreements, subject to the terms and conditions of its Accession Protocol, China now asks this Panel to change the rules and obligations, and void the terms and conditions.

3. This Panel's charge, however, 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 question before the Panel is: Is there an obligation in the text that requires what China contends the United States is obligated to do? For each claim China has made, the answer is no. China has failed to establish that the United States has acted inconsistently with any provision of any covered agreement. In numerous cases, as we have explained, China has failed on the most basic level to even identify the provisions of the covered agreements that it alleges the United States has violated. In other cases, when it has cited to various provisions, China has not explained how the United States has contravened them.

4. Indeed, rather than engage the Panel on the most relevant issues of substance with respect to each of its claims, China has presented nothing but distractions in an attempt to mask its failure to establish any WTO violations. A few examples from the past two days will suffice to make this point:

- Measure not consulted upon: In response to the direct question posed yesterday by Ms. Brown, China talked about everything *other than* why it refused to include in the consultations request its "as such" challenge, despite knowing full well when it requested

consultations that this was an issue about which it had concerns. Nothing in the DSU authorizes such disregard for the prerequisites to initiating a dispute.

- *Ex post* rationalization: China has asserted several times that the United States is introducing *ex post* rationales in its arguments in this dispute. That is not the case. The United States stands by the findings and determinations made by Commerce, all of which were based on record evidence. Our discussion of those findings and determinations in relation to the text of the WTO agreements may involve different terminology but that does not change the underlying rationales on which the determinations were based. Additionally, China has introduced arguments based on WTO rules that were not raised during the administrative proceedings below, and the United States must now respond to these arguments for the first time.

- Subsidy Offsets: China exerts tremendous energy arguing about "zeroing," which we all know to be a concept related to the calculation of a *dumping* margin, and citing to Appellate Body decisions under the *Anti-Dumping Agreement*. China's claim in this dispute, of course, is about *countervailing duty* investigations under the *SCM Agreement*.

- Concurrent application of AD and CVD measures: China insists on seeking a definitive statement of Commerce's domestic legal authority, which we have already explained is not possible. This is simply a transparent attempt to shift the focus away from China's failure to substantiate its grand quasi-economic theories with any facts, either before Commerce or this Panel. We would imagine that if Commerce had made a downward adjustment to export price based solely on *theories* put forward by the U.S. industry, China would be here complaining of such an improper adjustment.

5. These and the other attempts by China to distract the Panel away from the real issues in this dispute naturally reflect the fact that, when the focus is properly placed on those real issues, the shortcomings of China's claims become readily apparent. The text of the covered agreements, from which China flees, is determinative of the issues in this dispute, and damning to China's case.

6. But, the United States recognizes that the Panel is only at the beginning of its work. We hope that our First Written Submission and our presentation over these past two days have been helpful for the Panel. We look forward to receiving the Panel's written questions and we will endeavor to provide responses that bring clarity and understanding to the myriad 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 find in our favor and dismiss China's claims.

7. Once again, the United States thanks the Panel members for their time and attention to this matter.