OPENING 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 7, 2009

Mr. Chairman, members of the Panel:

1. On behalf of the United States delegation, I would like to thank you for agreeing to serve on this Panel. We do not intend to offer a particularly lengthy statement, as the U.S. First Written Submission responds to the arguments China raised in its First Written Submission. Instead of addressing all of the issues raised by China in that submission, we will focus this morning on China's arguments relating to Commerce's subsidy determinations and conclude with China's challenge to a Member's right to make full use of both the anti-dumping and countervailing duty remedies available under WTO rules.

2. At the outset, it is important to have a clear understanding of exactly what China is asking the Panel to do in this dispute. Unhappy with the rules agreed among Members of the WTO and accepted by China, when it acceded to the WTO in 2001, China now advances interpretations of those rules that have little connection with how those rules are properly understood in light of the customary rules of interpretation of public international law. Rather than operating under the rules that apply equally to all WTO Members, and the rules that it accepted upon entry into the WTO, China seeks to re-write those rules in this dispute, often to suit the particular circumstances of its economy. This dispute is filled with examples of China seeking such exceptional treatment, including the following:

- Declining to include in its consultations request a so-called "measure" that China believed to be impairing its benefits under the covered agreements;
- Resorting to texts outside of the covered agreements to import into the WTO rules an understanding of "public body" that China prefers but, in fact, would significantly undermine the effectiveness of the countervailing duty disciplines;
- Arguing against the use of external benchmarks notwithstanding the plain recognition in its Protocol that such benchmarks may be necessary in light of the nature of China's economy;
- Urging the Panel to deny Members, when addressing Chinese imports that are both dumped and subsidized, their longstanding right under the covered agreements to apply anti-dumping and countervailing duties concurrently.

3. As the Department of Commerce determined systematically over the course of these complex investigations, involving thousands of pages of record evidence, a proper application of

the rules applicable to all WTO Members as well as China's Protocol led to findings that Chinese imports of the relevant products were both dumped and subsidized. We realize that China is unhappy that duties have been imposed as a result of the investigations at issue in this dispute. The solution, however, is not, as China proposes to the Panel, an adjustment of the rules agreed among Members of the WTO and accepted by China when China acceded to the WTO in 2001. Under those rules, the only solution available to China in respect of these investigations, if it wants to avoid anti-dumping and countervailing duties, is to cease the dumping and subsidization that gave rise to the duties in the first place. But that is obviously a problem for China to address, not this Panel.

I. Commerce's Financial Contribution Determinations Are Consistent With the SCM Agreement

4. As fully explained in the U.S. First Written Submission, Commerce's "public body" determinations in the challenged CVD investigations were based on a proper interpretation of the SCM Agreement. China, however, asks this Panel to adopt an improper interpretation of the term "public body"; one that is not in accordance with the ordinary meaning of that term read in its context and in light of the object and purpose of the SCM Agreement.

5. Instead of properly applying the rules of interpretation reflected in the Vienna Convention to interpret the term "public body," China seeks to graft onto the SCM Agreement certain provisions of the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts. However, the ILC Draft Articles are not covered agreements, they are not context, nor are they otherwise relevant to the interpretation of the term "public body" in the SCM Agreement.

6. China also ignores commitments it made in the Working Party Report on its accession to the WTO. Members sought to clarify that when Chinese state-owned enterprises, including banks, provide financial contributions, they do so as government actors. China did not dispute that such enterprises and banks are public bodies, but only noted that "such financial contributions" might not give rise to benefits.

7. The Panel should reject China's effort to avoid the ordinary meaning of the term "public body." The Panel should reject China's attempt to import provisions of the ILC Draft Articles into the SCM Agreement. And the Panel should reject China's attempt to evade the commitments it made as part of its accession to the WTO.

8. Rather, the Panel should find that the ordinary meaning of the term "public body," read in its context and in light of the object and purpose of the SCM Agreement, indicates that a public body is an entity that is owned or otherwise controlled by the government, but not necessarily one that is authorized to exercise, or is in fact exercising, government functions.

9. The ordinary meaning of the word "public" includes the notion of belonging to, or being owned by, the state. Where an entity is owned by the state, the ordinary meaning of the term

"public" indicates that such entity can be a "public body." Further, the ordinary meaning of "public" is "the opposite of private." When referring to a business, "private" means "provided or owned by an individual rather than the State or a public body." Therefore, the term "public," when referring to a business, means "owned by the State."

10. The context of the term "public body" *supports* the U.S. interpretation and *weighs against* China's interpretation. The SCM Agreement's use of two different terms, "government" and "public body," indicates that these terms have distinct and different meanings. A "public body" is necessarily something different than the "government." The terms are not equivalent, as China argues.

11. The object and purpose of the SCM Agreement also *supports* the U.S. interpretation and *weighs against* China's interpretation. The Appellate Body has explained that the object and purpose of the SCM Agreement includes the right of WTO Members to "fully offset, by applying countervailing duties, the effect of the subsidy as permitted by the Agreement." Consistent with this object and purpose, and the need to prevent circumvention of the SCM Agreement, the term "public body" should be interpreted so that subsidizing governments cannot use state-owned enterprises to avoid the reach of the SCM Agreement.

12. The Spanish version of the Agriculture Agreement is of no assistance to China's case. This dispute concerns the interpretation of the term "public body," or "organismo publico," or "organisme public" in the SCM Agreement. The ordinary meaning of this term, read in its context, in light of the object and purpose of the SCM Agreement, is clear. There is no need to look to the Agriculture Agreement to determine the meaning of this term in the SCM Agreement. There is no discrepancy in the SCM Agreement. The discrepancy, to the extent one exists, lies in the Agriculture Agreement. Even there, however, the English and French texts are similar to each other, referring to "governments or their agencies" and "pouvoir public ou leur organismes." Only the Spanish version of the text departs by referring to "los gobiernos o por organismos publicos." The reconciliation of the meaning of the different versions of the Agriculture Agreement is a matter for another day, and must necessarily concern the object and purpose of the Agriculture Agreement.

13. As explained earlier, the commitments in the Working Party Report further *support* the U.S. position and *weigh against* China's position.

14. Additionally, the adopted panel report in the *Korea – Commercial Vessels* dispute *supports* the U.S. interpretation and *weighs against* China's interpretation. The panel there concluded that "an entity will constitute a 'public body' if it is controlled by the government (or other public bodies)." Majority government ownership can demonstrate control. Indeed, control normally flows from ownership. Legislative and regulatory instruments are not necessary for a state to exercise control, or to demonstrate such control. If the state owns the controlling interest in an enterprise or bank, it can control the enterprise or bank.

15. In sum, Commerce's application of a rule of majority ownership and its determinations that certain state-owned enterprises and banks are "public bodies" are consistent with Article 1.1(a)(1) of the SCM Agreement.

16. Because Commerce properly determined that certain SOEs and State-owned commercial banks (SOCBs) were public bodies, an entrustment or direction analysis, which is relevant only when an investigating authority seeks to determine if a financial contribution has been provided by a private body, was not required.

17. Likewise, it was not necessary for Commerce to perform an entrustment or direction analysis for transactions involving intermediary trading companies, which merely purchased materials from SOE suppliers and resold the materials to respondent producers. Commerce found that the public body input producers provided the financial contribution, which conferred benefits to the respondent subject merchandise producers. Thus, no entrustment or direction analysis was necessary.

II. Commerce's Benchmark Determinations Are Consistent with the SCM Agreement

18. With respect to benchmarks, while the U.S. First Written Submission fully explains why Commerce's determinations are consistent with the SCM Agreement, we must emphasize that if China's position were accepted, it would be impossible to calculate the benefit at all in certain cases.

19. For example, Commerce determined that interest rates for loans and domestic prices in China were distorted because of the predominant role of the Chinese government in these markets, rendering these interest rates and domestic prices unsuitable as benchmarks. However, China insists that RMB-denominated loans *must* be compared only to other RMB-denominated loans. Because RMB-denominated loans can *only* be obtained within China, China argues that other Members may only use in-country benchmarks to measure the benefit of such government-provided loans. China also argues that Members may *never* use an out-of-country benchmark to measure the benefit of land-use rights provided by a government. If China's position were accepted, Members would never be able to measure the benefit of these financial contributions because, as the Appellate Body has explained, the comparison of the financial contribution to the benchmark would become circular; the government price for the loan or land would be compared to itself.[1]

20. Nothing in the SCM Agreement requires such a result, and this outcome would be inconsistent with the flexible nature of Article 14 of the SCM Agreement. China ignores the flexibility of Article 14, which the Appellate Body has explained permits the use of out-of-

[1] *US – Softwood Lumber CVD Final (AB)*, para. 93.

country benchmarks.[2] China also ignores paragraph 15(b) of its Accession Protocol and paragraph 150 of the Working Party Report which confirm the permissibility of using out-of-country benchmarks to measure any benefit in CVD investigations concerning imports from China. Paragraph 15(b) expressly recognizes that "prevailing terms and conditions in China may not always be available as appropriate benchmarks."

21. China argues that the United States may not make reference to its Accession Protocol and Working Party Report in this dispute, claiming that doing so constitutes an *ex post* rationalization. This contention is utterly without support. Commerce explained the bases for its determinations in the final determinations themselves and the accompanying decision memoranda, and Commerce's determinations are justified by the evidence on the records of the investigations, not by China's Accession Protocol or any other covered agreement. The United States is free to make arguments under any relevant covered agreement in this dispute. And in any event, Commerce did indeed note that China's Accession Protocol confirms the permissibility of using out-of-country benchmarks in certain cases.

22. In the investigations at issue here, Commerce's determinations to use external benchmarks were based on findings that the predominant role of the Chinese government in various markets distorted prices and interest rates in China. Commerce did not apply a "*per se* rule" that only considered the degree of state ownership of the industries. Commerce used Chinese domestic prices as market benchmarks whenever they were available and appropriate, including in the *OTR Tires* CVD investigation. There, despite the government's majority ownership of domestic production, Commerce assessed other factors and concluded that the Government did not have a predominant role in the PRC rubber markets, and thus Commerce used actual import prices and domestic purchase prices from private producers as benchmarks. Also, in the *CWP* CVD investigation, Commerce used the Chinese producers' import prices for hot-rolled steel in addition to world market prices. However, where the facts demonstrated that Chinese prices and interest rates were distorted by the government's predominant role in a market and unsuitable as commercial benchmarks, Commerce used market-derived prices from outside China.

23. As explained in the determinations themselves and the U.S. First Written Submission, Commerce relied upon world market prices, with adjustments to account for "prevailing market conditions" in China, to measure the benefit of input subsidies; Commerce selected land prices in a country with a comparable per capita GNI, population density, and land prices, which reasonably reflected "prevailing market conditions" in China to measure the benefit of government-provided land-use rights; and Commerce developed comparison interest rates tailored to approximate a "comparable commercial loan which the firm could actually obtain on the market", to measure the benefit of government-provided loans. Consequently, China's assertion that Commerce did not "make any effort whatsoever to ensure that these benchmarks related to prevailing market conditions in China" is simply without foundation.

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[2] *US – Softwood Lumber CVD Final (AB)*, para. 103.

III. Commerce Was Not Required to Provide a Credit in the Benefit Calculations for Instances in Which China Provided Rubber Products for Adequate Remuneration in the *OTR Tires* CVD Investigation

24. China argues that Commerce was required to provide a credit in the subsidy benefit calculation for those instances in which China provided rubber to tire producers for adequate remuneration, that is, when China did not provide a subsidy. Once again, China seeks to avoid a proper analysis of Article 14 of the SCM Agreement, asking the Panel instead to elevate context above the text. China does not suggest that its invented obligation to provide a credit can be located in the text of Article 14, but instead argues that the use of the term "product" in Article VI:3 of the GATT 1994 and Articles 10, 19.3, and 19.4 of the SCM Agreement required Commerce in the *OTR Tires* CVD investigation to provide this credit. Accepting China's argument would mean that the mere use of the term "product" in other provisions of the SCM Agreement and the GATT 1994 overrides the "latitude" and "leeway" that panels and the Appellate Body have found in the guidelines set forth in Article 14 of the SCM Agreement.

25. Moreover, China's argument cannot be reconciled with the definition of a subsidy in Article 1 of the SCM Agreement. Any time a government provides a financial contribution and a benefit is thereby conferred, a subsidy is "deemed to exist." Instances of "non-subsidies" cannot eliminate or diminish the benefits conferred when a government provides a financial contribution that confers a benefit.

26. In support of its argument, China relies on a series of "zeroing" decisions from the Appellate Body, and even characterizes this issue as "subsidy zeroing." The invocation of the term "zeroing," however, is a distraction designed to cause confusion. The calculation of a subsidy benefit under Article 14 of the SCM Agreement is in no way related to zeroing. Zeroing is related to the calculation of margins of dumping under the *AD Agreement*. The Appellate Body's findings in the "zeroing" disputes are of no assistance to this Panel, as they concern a different calculation under a different agreement. There is no analytical connection between the calculation of a subsidy benefit and the calculation of margins of dumping that would justify extending the Appellate Body's reasoning.

27. In addition, China ignores the troubling implications of its argument. If China's interpretation were accepted, it would necessarily apply to all of Article 14 and would require that credit be provided whenever an investigating authority found that a financial contribution did not provide a benefit. Thus, Members would be required to provide credit across different types of input products and even different types of subsidies. As explained in the U.S. First Written Submission, China's own analysis of record data confirms this. China's calculation provided credit across different types of rubber input products. As a result, an "actual benefit" from the provision of one product, as China labeled it, was offset entirely by the so-called negative benefits of other, non-subsidized products or transactions.

28. China's interpretation would thus result in a benefit calculation that is artificially low, or even zero, preventing the United States from fully offsetting the effect of subsidies found to exist. It therefore fails to read Article 14 in light of the object and purpose of the SCM Agreement. Additionally, as fully explained in the U.S. First Written Submission, a careful analysis of China's First Written Submission demonstrates that, despite making reference to numerous provisions of the SCM Agreement and the GATT 1994, China fails to substantiate any claim of inconsistency with any provision of the WTO Agreements in connection with its invented obligation to provide a credit in the benefit calculation. And this morning in its opening statement, China made no further effort to identify any inconsistency.

IV. Commerce Properly Measured the Benefit Conferred Upon Producers of Subject Merchandise in Instances Where Production Inputs Were Purchased From Trading Companies

29. With respect to China's argument that Commerce was required to measure the benefit conferred upon trading companies in addition to the benefit conferred upon respondent producers, the United States reiterates that China has not identified any provision of the SCM Agreement or the GATT 1994 with which Commerce's benefit determinations are purportedly inconsistent. That is the case with respect to China's First Written Submission and China's opening statement this morning. Rather, China merely asserts that Commerce was required to determine the benefit conferred upon trading companies in addition to determining the benefit conferred upon respondent producers. However, it was not necessary to measure any benefit that may have been received by the trading companies. The amount or portion of any benefit received by the trading companies is irrelevant for the purpose of determining the benefit conferred upon the subject merchandise producers.

30. In these investigations, Commerce compared the price the producer of subject merchandise paid for the input product with an appropriate benchmark price. As a result, Commerce's analysis identified only the amount of benefit that was conferred upon producers of subject merchandise.

V. Commerce's Specificity Determinations in the *OTR Tires* and *LWS* CVD Investigations Were Consistent With Article 2 of the SCM Agreement

31. Contrary to China's claims, Commerce's specificity determinations were consistent with the SCM Agreement. China misreads the agreement. With respect to the specificity of policy lending, China argues that none of the measures relied upon by Commerce "defines a subsidy," none of the measures "explicitly limits" access to the subsidy to "certain enterprises," and none of the loans were "made pursuant to the measures" identified by Commerce. The approach China asks the Panel to apply, however, is not the analysis set forth in Article 2.1(a) of the SCM Agreement.

32. Article 2.1(a) of the SCM Agreement requires an investigating authority to determine whether: (i) the granting authority explicitly limits access to a subsidy to "certain enterprises;" or (ii) the legislation pursuant to which the granting authority operates explicitly limits access to a subsidy to "certain enterprises." Nothing in Article 2.1(a) requires Members to identify legislation that defines the "elements of a subsidy." The elements of a subsidy are the financial contribution and benefit, which are analyzed separately from specificity.

33. As fully explained in Commerce's determinations and in the U.S. First Written Submission, central, provincial, and municipal policy documents clearly substantiate that the various levels of government in China guided lending to a *group* of industries, which included the OTR tire industry. These policies guided banks to provide loans to certain industries, including the tire industry, while prohibiting lending to other industries. Article 2.1 of the SCM Agreement defines "certain enterprises" to include a group of industries and permits a specificity determination based on a subsidy that is specific to a group of industries. Thus, the policy lending was specific within the meaning of Article 2.1(a) of the SCM Agreement.

34. Likewise, China's challenge of Commerce's land-use rights specificity determination relies on a misreading of Article 2.2 of the SCM Agreement. Pursuant to Article 2.2, a subsidy is specific if it is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority.

35. China argues that if a subsidy is available to *all* enterprises within a designated geographical region, it is not specific pursuant to Article 2.2 of the SCM Agreement. Following China's reasoning, however, the only difference between Article 2.1(a) and Article 2.2 is that, pursuant to the latter, the "certain enterprises" to which a subsidy is explicitly limited happen to be located within a designated geographical region within the jurisdiction of the granting authority. For China, then, even if these enterprises were <u>not</u> located within a designated geographical region, the subsidy granted to them would <u>nevertheless</u> be specific pursuant to Article 2.1(a) by virtue of the explicit limitation to "certain enterprises." China's interpretation of Article 2.2 would render that provision redundant, which is contrary to the rules of treaty interpretation. As explained in the U.S. First Written Submission, China's interpretation of Article 2.2 is also contrary to Articles 8.1(b) and 8.2(b) of the SCM Agreement. For these reasons, China's argument cannot be accepted.

36. As explained in the U.S. First Written Submission, Commerce properly determined in the *LWS* CVD investigation that New Century Industry Park fits the ordinary meaning of a designated geographical region. As demonstrated in the record, the land-use rights subsidy at issue was used as an incentive to relocate producers to the industrial park and was tied to the level of investment within the park. Therefore, the subsidy is unique and only available to enterprises investing within the industrial park.

37. Contrary to China's arguments, the fact that Huantai County may have granted other types of land-use rights to other leaseholders outside of the industrial park is irrelevant to

determining whether the particular subsidy at issue was specific to enterprises within the industrial park. Article 2.2 of the SCM Agreement does not require an investigating authority to determine that a benefit was unavailable to all enterprises outside of the designated geographical region before finding a subsidy geographically specific. This implausible interpretation of Article 2.2 would mean that a granting authority could circumvent the subsidy disciplines simply by granting the same benefit to just one enterprise outside of the designated geographical region. Such a reading of Article 2.2 is both illogical and inconsistent with the object and purpose of the SCM Agreement.

VI. The United States Did Not Act Inconsistently With the SCM Agreement or the GATT 1994 in the Concurrent Application of CVD and AD Measures to Certain Products from China

38. We turn now to China's claim that a Member is not permitted to avail itself of both anti-dumping and countervailing duty remedies in respect of imports from China when the anti-dumping duty is calculated on the basis of a non-market economy methodology. Before continuing with our prepared text, I would like to respond to one point raised by China in its opening statement. In that statement, China said that it "does not contend that the United States must 'choose' between the use of countervailing duties and the use of an NME methodology," only that when applying both, "it must do so in a manner that takes into account the fact that it offsets the same alleged subsidies through the manner in which it calculates antidumping duties."[3] This is simply a distinction without a difference. However China re-packages its argument, its theory remains the same: in China's words from its First Written Submission,

> the imposition of a double remedy for the same alleged subsidy is *inherent in the concurrent application* of the NME methodology and CVDs to the same categories of imports... Commerce imposes a double remedy for the same alleged acts of subsidization *in all cases* in which it applies its NME methodology concurrently with the application of countervailing duties to the same categories of imports.[4]

Under this theory, where the so-called double remedy inheres in the concurrent application of NME anti-dumping duties and countervailing duties, it is difficult to understand China's challenge as anything *other* than a challenge to that concurrent application. If it is the concurrent application of both sets of duties that gives rise to an alleged double remedy, then the logic of China's argument necessarily suggests that the United States must *choose* between the use of countervailing duties and the use of an NME methodology.

39. We now begin by stating the obvious: Nothing in the text of the covered agreements, including China's Accession Protocol, explicitly limits or conditions a Member's right to apply

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[3] Opening Statement of China, para. 75.

[4] First Written Submission of China, para. 366. (Emphasis added)

anti-dumping and countervailing duty remedies concurrently in the context of domestic subsidies. On this point, the parties appear to be in full agreement.

40. The question left for the Panel, therefore, is what meaning should be given to the absence of such an explicit provision in the text. Here, the parties diverge.

41. As pointed out in the U.S. First Written Submission, since the earliest days of the GATT 1947, Members have recognized the right to apply anti-dumping duties and countervailing duties concurrently to imports that are both dumped and subsidized. This possibility is reflected in the text of the GATT 1994 itself in Article VI:5, which provides the only limitation on that right, solely in the context of export subsidies.

42. Indeed, it is precisely because this right was well understood that certain Contracting Parties sought, and ultimately obtained, a limitation in the Tokyo Round Subsidies Code, requiring a Contracting Party to choose between the anti-dumping and countervailing duty remedy in respect of imports from non-market economies. When drafting the SCM Agreement, however, Members chose not to maintain this limitation.

43. China's Accession Protocol was negotiated against this backdrop of the well-established right to apply both anti-dumping and countervailing duties concurrently. The Protocol affirms Members' right to apply anti-dumping duties to imports from China, including an explicit recognition that the nature of China's economy may warrant use of a particular methodology that does not use costs or prices in China. The Protocol similarly affirms Members' right to apply countervailing duties to imports from China, again with the recognition that costs and prices in China may not be appropriate to use in the analysis and calculation of subsidies. Nowhere in the Protocol is there any limitation on the resort to either of these remedies provided that the condition of dumping or subsidization, together with injury, have been established.

44. In sum, the text makes clear that Members have the unqualified right to apply anti-dumping and countervailing duties in the context of domestic subsidies while treating China as a non-market economy. In this light, we continue to be surprised - as do other Members - by China's insistence that a Member cannot use both remedies in respect of imports from China. While China was free to seek such a limitation in the context of its accession, the Protocol that was negotiated and agreed to contains no such limitation.

45. In the absence of textual support for its view that Members do not have this right, China, perhaps not surprisingly, is left to resort to theorizing about the so-called "distortions of the market" caused by dumping and subsidization.[5] China argues that an anti-dumping margin calculated using a non-market economy methodology captures domestic subsidies in their entirety – rendering any application of a countervailing duty a so-called "double remedy." China offered no empirical evidence in the investigations at issue, nor does it cite to any evidence

[5] China First Submission, para. 329.

before this Panel, to show how this proposition is necessarily so in any given case. Rather, China simply contends that it happens *automatically*, in *every* case, solely on the basis of China's quasi-economic theories about the "rationales" for using the non-market economy anti-dumping methodology and for imposing countervailing duties.

46. Whatever the merits of China's quasi-economic theories – with which we have strong disagreements, as explained in the U.S. First Written Submission[6] – the text of the covered agreements, which is the only legally binding evidence of Members' intent, does not reflect those theories. Unfortunately for China, grand quasi-economic theories cannot substitute for textual commitments agreed to by the Members of the WTO. As we have noted, Members have spoken unambiguously when they intended to limit an investigating authority's ability to apply both anti-dumping and countervailing duty measures concurrently. And the text reveals that they did not so intend in the context of domestic subsidies.

47. Despite China's sweeping pronouncements, it should be emphasized that China in the end only makes three narrow claims, based on Articles 19.3 and 19.4 of the SCM Agreement, and Article I:1 of the GATT 1994. Even a cursory examination of those provisions reveals that China has failed to establish any violation. China's claims under Articles 19.3 and 19.4 of the SCM Agreement are premised on the most fundamental of errors. Both provisions limit the amount of *countervailing duties* that may be imposed; they do not speak to *anti-dumping duties*. China seeks to overcome this textual limitation, again relying on its theory, by characterizing the *anti-dumping duty* calculated under a non-market economy methodology in an *anti-dumping* investigation, as a countervailing duty. China's theory fails to explain how this anti-dumping duty, determined on the basis of a comparison of prices in different markets, should be deemed to be imposed "for the purpose of offsetting any subsidy" as required of any countervailing duty.

48. China also challenges the actions of the United States under GATT Article I:1. Although ostensibly styled as an MFN claim, the essence of China's complaint, as discussed in the U.S. First Written Submission,[7] is that it is subject to a non-market economy methodology in anti-dumping investigations. While this certainly results in China being treated differently from market economies, this differential treatment is necessitated by the nature of China's economy itself, as recognized in the explicit authority given under China's Protocol to Members to employ such a methodology. Again, although China may have wished that the Accession Protocol had been negotiated differently, the authorization therein speaks for itself, and China's attempts to undermine that authorization should be properly rejected.

49. As we have tried in the past few months to understand China's argument on this issue, we are still left wondering exactly what China proposes that a Member do when faced with dumped and subsidized imports from China. Presumably China does not suggest that Members are not entitled to counteract such dumping and subsidization, a right which is available to Members in

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[6] U.S. First Submission, paras. 445-462.
[7] U.S. First Submission, paras. 433-444.

respect of imports from every other WTO Member. Nevertheless, China submits that the concurrent application of anti-dumping and countervailing duties – the mechanism Members have long used when addressing imports from other countries – should not apply to imports from China. This then raises the questions of whether a Member is expected to forego the countervailing duty remedy, specifically provided for in China's Protocol, in favor of the exclusive application of an *anti-dumping duty* calculated under the non-market economy methodology provided for in China's Protocol? Or whether a Member is expected to forego the non-market economy methodology, also specifically provided for in China's Protocol, in favor of the exclusive application of a *countervailing duty*?

50. It must be emphasized that these questions are not merely rhetorical. These go to the heart of what rights, under China's argument, Members retain in respect of their trade remedy disciplines. As we have explained, for over 60 years Members have concurrently applied anti-dumping and countervailing duty measures to address imports that are both dumped and subsidized. China now asks this Panel to believe that it is a special case and that this longstanding right should be re-assessed for Chinese products. No such special right exists for China under the covered agreements.

VII. Conclusion

51. As we have demonstrated in our First Written Submission and again this morning, China's claims have no merit under the covered agreements. To the extent China continues to complain of anti-dumping and countervailing duties imposed as a result of the investigations at issue, the problem is of China's own making. It is the subsidies granted by China that give rise to the countervailing duties at issue in this dispute. It is the pricing practices of China's firms that give rise to the anti-dumping duties at issue in this dispute. The solution, therefore, also lies exclusively in China's hands. If China wants to avoid duties such as those imposed as a result of these two sets of investigations, it need only eliminate its subsidization and its firms need only adjust their pricing practices to eliminate price discrimination.

52. Rather than taking these straightforward actions, China invites the Panel to re-write the rules that have been applied and continue to apply to all other WTO Members, as well as the rules that China and WTO Members specifically agreed to in China's Accession Protocol. We respectfully request that the Panel decline China's invitation.

53. Mr. Chairman, members of the Panel, this concludes our opening statement. We would be pleased to respond to any questions you may have.