

***China – Countervailing and Anti-Dumping Duties on
Grain Oriented Flat-rolled Electrical Steel from the United States
(DS414)***

**Closing Statement of the United States
at the Second Substantive Meeting of the Panel with the Parties**

December 7, 2011

1. Mr. Chairman, Members of the Panel. The United States would like to begin by thanking you and the Secretariat for your efforts in the preparation for and conduct of this hearing.
2. We hope that the discussion held here yesterday and today has assisted the Panel in enhancing its understanding of the issues before it in this case. We look forward to elaborating on our comments in further written submissions.
3. Before these hearings formally close, the United States would like to make a few brief comments.
4. First, while there was limited discussion of the U.S. disclosure claims at this meeting of the Panel, we wish to highlight MOFCOM's repeated failure to disclose essential non-confidential information to the parties during its investigation and to provide more than skeletal information in its Final Determination concerning the facts and reasoning central to its determination. This is evidenced by China's repeated submission to the Panel of new information and new justifications for MOFCOM's determination. What China has complained are the shifting U.S. arguments simply reflect our need to confront a moving target. Had MOFCOM disclosed its facts and underlying reasoning, as required by the Agreements, these proceedings could have been far more focused.
5. With respect to initiation, China in its opening statement referred to our claims regarding Article 11 of the SCM Agreement as "a distraction to other matters before the panel." Contrary to China's assertion, Article 11 of the SCM Agreement is not a distraction – it is an obligation that ensures that CVD investigations are not initiated based on frivolous claims. A party should not have to spend time and resources defending unsubstantiated allegations. MOFCOM did not meet the obligations of Article 11 in this instance.
6. With respect to Facts Available, we would like to emphasize that our position is that the U.S. Companies were cooperative and responded MOFCOM's questions on Government Procurement in accordance with the instructions in the questionnaire. Even if the panel does not ultimately share that assessment, the record does not reflect the sort of egregious non-cooperation that China attempts to paint here. Moreover, the information that China claims should have been provided was in a form that, as we explained, could not have done what China purports it would do. Thus, this information could hardly be critical to MOFCOM's inquiry.

7. Given the companies engagement with MOFCOM on the question of utilization, the limited value of the alleged missing information, and the overwhelming facts showing that the utilization rate (direct or indirect) was zero, an adverse inference that 100% utilization on all sales of all products is not appropriate. At most, the record would support an adverse rate of 29%, which would represent an adverse inference of 100% utilization for the infrastructure/construction sales, the only sector sales for which the applicant alleged a subsidy.

8. With respect to injury, we have had a great deal of discussion on price effects. We would like to highlight two principal points. First, the Agreements specifically require that any price depression and suppression be significant and be the effect of the subject imports. The Panel should not permit China to read this language out of the Agreements. Second, China's price depression and price suppression analysis are ultimately dependent on MOFCOM's low price findings. These findings are not supported by positive evidence and do not reflect an objective examination.

9. Finally, we emphasize that even if subject import prices were low, they cannot explain domestic industry price declines in the first quarter of 2009 far greater than necessary to meet import competition, which led to the industry's decline in financial performance. These can be explained only by the massive inventory overhangs that developed due to overproduction. MOFCOM's conclusion that the overproduction and inventory overhang did not cause injury is not supported by positive evidence.

10. The United States would like to conclude by again thanking the Panel and Secretariat for their efforts. We look forward to receiving your written questions and continuing this discussion in future submissions.