*CHINA – COUNTERVAILING AND ANTI-DUMPING DUTIES ON GRAIN ORIENTED FLAT-ROLLED ELECTRICAL STEEL FROM THE UNITED STATES:*

*RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES*

**(DS414)**

# CLOSING ORAL STATEMENT OF THE UNITED STATES OF AMERICA AT THE SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES

**October 15, 2014**

Mr. Chairman, Members of the Panel:

1. The United States would like to begin by thanking the Panel and the Secretariat staff for your efforts in the preparation for and conduct of this hearing. We hope that the discussion held here yesterday and today has been of use to the Panel as you make your findings on the issues in this dispute.

2. As we noted in our opening statement, the United States has brought three disputes concerning China's application of trade remedy measures, and each of these disputes addresses similar problems under the same procedural and substantive provisions of the covered agreements. Indeed, a review of the Appellate Body report in *China – GOES* shows that China is making some of the same exact arguments here that it made in the original proceeding. For example, at paragraph 20 of its report, the Appellate Body writes: "According to China…The Panel's 'overarching error' is that it failed to consider MOFCOM's discussion about price effects 'as written and as a whole.'" The DSB has already rejected that argument and many of China's other arguments, which are based on the same defective evidence as in the original proceeding.

3. At times, listening to China's interventions during this meeting, it appeared that China was arguing that because MOFCOM evaluated the "record as a whole," MOFCOM's compliance measure must be consistent with China's WTO obligations. To the contrary, China has not said that each subsidiary conclusion is a basis to uphold its overall claim. Therefore, if one subsidiary conclusion fails, the overall conclusion does as well. And here, the United has shown that not just one of MOFCOM's grounds for finding adverse price effects was flawed. Rather, the United States has shown that each of the constituent parts of MOFCOM's analysis does not hold up. For these reasons, China's vague appeals to the "record as a whole" cannot save MOFCOM's analysis.

4. Furthermore, the U.S. claims address not just the defects in China's examination of the record evidence in the redetermination, but the means by which China conducted its examination of price effects. As we have shown, and as the third parties agree, the AD and SCM Agreements require a rigorous examination by investigating authorities of the factors indicated in the agreement as being relevant to the issue of price effects. This objective examination must include a review of the relative prices of subject imports and domestic like product. The point is not, as China mischaracterizes the U.S. position, that the ultimate finding on price effects must be based on price undercutting. Rather, the point is that an examination of relative prices is relevant to an inquiry of price effects: the evidence could indicate either that subject imports are causing adverse price effects, or that subject imports are not doing so. Here, after the DSB found in the original dispute that relative prices did not support China's findings of price effects, China attempted to address the problem by doing even less analysis, that is, by ignoring this relevant factor altogether. This type of analysis does not meet the specific standards contained in the agreements. Accordingly, MOFCOM's redetermination fell far short of compliance.

5. The United States hopes that our presentations 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 further clarity and understanding to the issues in this dispute.

The United States would like to conclude by again thanking the Panel and Secretariat for your time and attention to this matter.