CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON BROILER PRODUCTS FROM THE UNITED STATES: RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES

(DS427)

EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA

December 9, 2016

I. INTRODUCTION

1. Articles 7 and 11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) charge a WTO panel with making those findings that will assist the DSB in making the recommendations provided for in the covered agreements – namely, the recommendation to bring a measure found to be inconsistent with a covered agreement into conformity with the Member's WTO obligations under that agreement (DSU Art. 19.1). And that is precisely what the Panel did in this dispute, finding that China's antidumping and countervailing duty determinations were inconsistent with numerous basic obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (AD Agreement) and the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement). Unfortunately, China did not take those findings and recommendations as an opportunity to comply and, thus, to bring about a positive solution to the dispute (DSU Art. 3.7).

2. Both the conduct of the reinvestigation and the findings in the redetermination confirm that MOFCOM adheres – without justification – to problematic practices or reasoning – and even moves in precisely the wrong direction: toward less transparency, less due process, and less objectivity.

II. PROCEDURAL BACKGROUND

3. On July 15, 2014, the United States and China informed the DSB that the two parties had concluded Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding ("Agreed Procedures"). On May 10, 2016, the United States requested consultations pursuant to Article 21.5 of the DSU concerning China's measures continuing to impose antidumping and countervailing duties on broiler products from the United States, which were held on May 24, 2016.

4. On May 27, 2016, the United States filed a panel request requesting recourse to Article 21.5 of the DSU. At the June 22, 2016 meeting of the DSB, the DSB agreed to refer to the original panel, if possible, the matter raised by the United States. Brazil, Ecuador, the European Union, and Japan reserved their third party rights. On July 18, 2016, the compliance panel was composed with the members from the original panel.

III. FACTUAL BACKGROUND

5. The Panel found that MOFCOM breached Article 6.9 of the AD Agreement by failing to disclose margin calculations and data used to determine the existence of dumping.

6. The United States contended in the original dispute that MOFCOM breached the second sentence of Article 2.2.1.1, because, *inter alia*, MOFCOM allocated Tyson's production costs of non-subject merchandise – including blood, feathers, and organs – to subject merchandise, thereby inflating normal value. The Panel considered the evidence presented by the United States regarding the products produced by Tyson and China's materials and found that the United States had established a breach of Article 2.2.1.1. Moreover, the Panel found that one particular aspect of MOFCOM's methodology – straight allocation of total processing costs – was inherently unreasonable

7. The Panel found that MOFCOM's price effects analysis in its injury determination was inconsistent with China's WTO obligations because it failed to account for differences in the product mix between subject imports and domestic products. The Panel also noted that MOFCOM's finding of price suppression is "at least partly dependent" on its finding of price undercutting – and that "MOFCOM's Determinations do not separately or independently discuss the impact of the volume and increased market share of subject imports on the ability of domestic producers to sell at prices that would cover their costs of production." The Panel also asserted judicial economy on the United States' claim concerning MOFCOM's flawed impact and causation analyses – and explicitly recognized that MOFCOM would need to revisit such analyses.

IV. SCOPE OF AN ARTICLE 21.5 PROCEEDING

8. Under Article 21.5 of the DSU, measures that negate or undermine compliance with the DSB's recommendations and rulings and any measures taken to comply that are inconsistent with a covered agreement may come within the scope of an Article 21.5 proceeding.

V. STANDARD OF REVIEW

11. An Article 21.5 panel is to engage in an objective assessment to determine the existence or consistency of a measure taken to comply. If on a specific issue the underlying evidence and the explanations given by the investigating authority have not changed from the original determination, then an Article 21.5 panel would normally reach the same conclusions as the original panel. The investigating authority is responsible for ensuring that its explanations reflect that conflicting evidence was considered.

VI. MOFCOM'S REINVESTIGATION BREACHED THE PROCEDURAL PROTECTIONS OF THE AD AND SCM AGREEMENTS

9. MOFCOM's reinvestigation breached key procedural protections contained within the AD and SCM Agreements.

A. Factual Background

10. Before the Reinvestigation Injury Disclosure (RID), U.S. interested parties received no notice as to which Chinese firms were being specifically investigated; why they were chosen; what questions and information requested were posed to these firms; and what data and information the Chinese firms provided in response. The critical questions of (i) what information was specifically required by MOFCOM from these firms and (ii) what they provided remain entirely unanswered.

B. China Breached Article 6.1 of the AD Agreement and Article 12.1 of the SCM Agreement because MOFCOM Denied Interested Parties Notice or Knowledge of the Information MOFCOM Required in its Reinvestigation

11. Here, it is clear from the RID that MOFCOM *required* pricing information from four domestic Chinese companies in order to revise its price effects analysis. Specifically, these four

companies provided MOFCOM with sales data concerning chicken feet, chilled chicken cuts with bone, chicken wings, and gizzards, which MOFCOM then purportedly used to compare against prices for subject imports, and ultimately reach its finding of price undercutting. It is also clear that interested parties, such as U.S. respondents and the United States, did not have notice that MOFCOM required this information.

C. China Breached Articles 6.1.2, 6.2, and 6.4 of the AD Agreement and Articles 12.1.2 and 12.3 of the SCM Agreement by Denying Interested Parties of Evidence Presented by the Other Interested Parties Participating in the Reinvestigation

12. It is undisputed that the four Chinese domestic companies that received requests for information from MOFCOM during the reinvestigation are "producers of the like product in the Importing Member." MOFCOM was thus required to "promptly" make available to U.S. respondents the information provided by interested parties in response to MOFCOM's requests during the reinvestigation. Because MOFCOM failed to make the information available *at all* to respondents, China is in breach of AD Agreement Article 6.1.2 and SCM Agreement Article 12.1.2.

13. MOFCOM's failure to permit interested parties access to the information relied on by MOFCOM and to enable those parties, through review of that information, to prepare their cases is also inconsistent with Articles 6.2 and 6.4 of the AD Agreement and SCM Agreement Article 12.3. These provisions provide that interested parties have both timely opportunities (i) to see "all information" that is relevant, non-confidential, and used by competent authorities and (ii) timely opportunities to prepare their presentations "on the basis of" that information. In the reinvestigation, the information subject to this obligation includes: (1) the pricing information provided by the four Chinese domestic enterprises to MOFCOM during the reinvestigation; (2) the precise identity of those Chinese enterprises; and (3) the specific questionnaires and information requests issued by MOFCOM to those Chinese companies.

14. First, MOFCOM failed to disclose information "relevant" to the interested parties' presentation of their cases. The *information* requested by MOFCOM from the four Chinese domestic enterprises during the reinvestigation constitutes product-specific pricing data that MOFCOM sought and that MOFCOM considered supported its findings of purported price cutting, as part of its price effects injury analysis. Second, as noted previously, MOFCOM has *not* claimed that any of this information is confidential. Third, the information was "used" by MOFCOM in the reinvestigation because it is the explicit basis by which MOFCOM maintains its price effects findings.

15. In addition, China breached the obligation under AD Agreement Article 6.4 and SCM Agreement Article 12.3 "to provide timely opportunities" for interested parties "to *prepare presentations* on the basis of this information" because MOFCOM did not permit interested parties to see the information. If a party is denied access to information, then it follows that the party was also denied an *opportunity* to prepare a presentation. Thus, MOFCOM's failure also constituted a breach of Article 6.2 of the AD Agreement.

D. China, Once Again, has Breached Article 6.9 of the AD Agreement by Failing to Disclose the Margin Calculations and Data Used to Determine the Existence of Dumping and to Calculate Dumping Margins

16. Despite the original Panel's finding that China breached Article 6.9 of the AD Agreement by failing to disclose essential facts related to the dumping margins for Pilgrim's Pride, Tyson, and Keystone, MOFCOM has, once again, failed to disclose dumping margin calculations and underlying data for two of these respondents – Pilgrim's Pride and Keystone. With respect to Pilgrim's Pride, it was denied access to the data calculations from the original investigation even though MOFCOM used a purported error in the data and calculations to increase the margin of Pilgrim's Pride. Similarly, Keystone was denied access to its data and calculations for the new antidumping rate that was set following the reinvestigation.

VII. MOFCOM'S ANTIDUMPING DUTY FINDINGS ARE INCONSISTENT WITH ARTICLES 2.2.1.1, 9.4, AND 6.8 AND ANNEX II OF THE AD AGREEMENT

A. China Breached the Second Sentence of Article 2.2.1.1 of the AD Agreement

1. MOFCOM Applied to Tyson a Biased Weight-Based Methodology that Improperly Allocated Costs Not Associated with the Production and Sale of the Product Under Consideration

17. China has breached the second sentence of Article 2.2.1.1 because MOFCOM did not "consider all available evidence on the proper allocation of costs." The essence of the problem is the internal inconsistency of MOFCOM's logic concerning a weight-based methodology. The position advocated by China through its prior WTO submissions and in MOFCOM's redetermination is that apportionment of costs by weight is reasonable because it applies costs of the chicken equally across *all* products. But, under that logic, an objective investigating authority would need to account for all products that derive revenue and then allocate cost by weight to all of them. Thus, products that might earn little revenue, particularly in respect to their weight, such as blood, organs, feathers, etc., still would need to have costs distributed to them, rather than leave the costs focused on the remaining products – which artificially inflates normal value. MOFCOM did not do that apportionment in its first determination, and it has not done so now in its redetermination.

18. During the redetermination, Tyson argued that MOFCOM should accept the value-based accounting reflected in its books and records. However, Tyson also argued that "in the event that MOFCOM incorrectly continues to rely on a weight-based allocation, it must fully account for all products that are produced from the live birds that are processed into both subject and non-subject merchandise." To that end, Tyson made a straightforward request: if MOFCOM erroneously resorts to allocating costs by weight rather than as reflected in Tyson's books and records, then MOFCOM (per its own logic) would need to "divid[e] the <u>total cost</u> of the live birds by their <u>total weight</u>" – and not simply omit products it finds inconvenient from the calculation. A supposed weight-based methodology that fails to actually account for the weight

contributed by all the products derived from the bird is internally incoherent and therefore cannot be a "proper allocation of costs" consistent with Article 2.2.1.1.

19. The reasons proffered by MOFCOM for rejecting Tyson's position – and the consistency of MOFCOM's own position – are not reasoned or adequate. First, MOFCOM seems to be suggesting that it does not apportion costs across all products because some chickens died *en route* to the processing plant or were otherwise not processed. But that assertion does not speak to the point at hand, which is that costs must be allocated across all products that are produced. Moreover, the data provided by Tyson explicitly made proper allowance for "costs of any birds that are not processed because they die at the farm or are condemned at the plant. . . ." Second, MOFCOM asserts that Tyson confirmed that the costs to produce subject merchandise were exclusive. That position cannot be reconciled with either the data submitted by Tyson referenced above, or Tyson's explicit argument seeking for costs to reflect all products. Third, China is claiming that Tyson's value based cost allocation methodology is perfectly reasonable *when it comes to products that are not subject to the investigation*. This reason, again, does not address the point that all costs need to be accounted for. Finally, MOFCOM cites as support that the monthly costs for live birds changes and that Tyson does not specify which are used for subject merchandise and non-subject merchandise is misplaced as well. Whether costs change from month to month does not obviate the need to ensure costs are properly allocated.

2. MOFCOM has not Addressed the Article 2.2.1.1 Findings with respect to Pilgrim's Pride

20. Despite the Panel's findings, MOFCOM's redetermination refused to consider any alternative allocation methodologies for Pilgrim's Pride. Instead, MOFCOM only investigated and modified the dumping margin for Pilgrim's Pride on the basis of the purported errors in calculation. Thus, because China's redetermination does not contain any additional "evidence of consideration" of alternative methodologies, China's redetermination remains in breach for the same reasons as in the original investigation.

B. China Breached Article 9.4 of the AD Agreement through the "All Others" Rate Set by MOFCOM

21. MOFCOM's arbitrary selection of the highest rate found is not consistent with the disciplines of Article 9.4, which establishes that the all others' rate shall not exceed "the weighted average margin of dumping established with respect to the selected exporters or producers."

C. China's Resort to and Application of Facts Available to Tyson Is Inconsistent with Article 6.8 and Annex II of the AD Agreement

22. MOFCOM has not presented any evidence that Tyson refused access to, failed to provide, or other otherwise impeded MOFCOM's ability to obtain requested information. Tyson took appropriate steps to use the data available in its records to satisfy MOFCOM's request for information to the fullest extent that it could.

23. Over the period of investigation, Tyson recorded, as part of its accounting practice, only the aggregate actual costs incurred and the "standard costs," the latter of which reflect Tyson's expectation as to what was incurred at a particular segment. Tyson used the standard costs to create allocation percentages, which it then applied to the aggregate actual cost to generate the specific costs MOFCOM requested. Tyson did not track the data requested by MOFCOM as part of its standard practice. MOFCOM completely disregarded what Tyson proffered and, instead used the best information available. MOFCOM did not present any evidence or explanation that the costs reported by Tyson were not "supplied in a timely fashion" and in the "requested medium" or "appropriately submitted so that {they} can be used in the investigation without undue difficulties." Moreover, the claims cited by MOFCOM for rejecting Tyson's reported costs do not indicate any efforts by MOFCOM to undertake an "objective process of examination" and to attempt to verify their accuracy and reliability.

24. MOFCOM's assertion that Tyson's costs reported in the reinvestigation do not tie to those in the original investigation is contradicted by the very exhibit relied upon MOFCOM. Moreover, Tyson in fact reported costs for each of the combinations. Further, MOFCOM erroneously asserts that Tyson failed to report actual meat and processing costs incurred during the period of investigation. In addition, Tyson explained that it used standard costs for the first half of 2009, rather than for the entire period of investigation, because those were the only standard costs available during the reinvestigation.

VIII. MOFCOM'S FINDINGS IN ITS INJURY REDETERMINATION REMAIN INCONSISTENT WITH THE AD AND SCM AGREEMENTS

A. China's Biased Price Effects Analysis Breached Articles 3.1 and 3.2 of the AD Agreement and Articles 15.1 and 15.2 of the SCM Agreement

25. MOFCOM purported to control for the "clear differences in product mix that affected price comparability" found by the Panel by analyzing product-specific pricing data collected from only four of the 17 domestic producers included in the domestic industry. MOFCOM did not disclose its methodology for selecting producers for inclusion in its sample of the domestic industry or for collecting product-specific pricing data from these producers, however. Nor did MOFCOM disclose the percentage of domestic industry sales covered by the product-specific data collected. Accordingly, MOFCOM failed to establish that the pricing data it collected was sufficiently representative to permit an objective underselling analysis.

26. Absent any explanation to the contrary, MOFCOM was in a position to collect pricing data from all members of the domestic industry. MOFCOM thus failed to ensure that its new underselling analysis was based on an objective examination of positive evidence. The above facts also confirm that MOFCOM has also breached China's obligations under Article 6.4 of the AD and Article 12.3 of the SCM Agreement.

27. MOFCOM also based its finding of price suppression on underselling in the redeterminations. Significantly, MOFCOM revised the concluding paragraph of its price section in the redetermination to eliminate the references to subject import volume and market share found in the corresponding paragraphs of the original determinations, clarifying its view that

price suppression resulted from subject import underselling, not subject import volume. In responding to various arguments raised by USAPEEC, MOFCOM likewise resorted to the notion that subject import underselling necessarily means that those imports suppressed domestic prices. Given MOFCOM's reliance on its new underselling analysis for its price suppression finding, the deficiencies of that underselling analysis render MOFCOM's price suppression finding inconsistent with AD Agreement Articles 3.1 and 3.2 and SCM Agreement Articles 15.1 and 15.2. Because this deficient underselling analysis is also the foundation for MOFCOM's finding of price suppression, MOFCOM's price suppression finding is inconsistent with AD Agreement Articles 3.1 and 3.2 and SCM Agreement Articles 15.1 and 15.2.

28. MOFCOM's reliance on underselling to support its price suppression finding was also unsupported by the evidence because the record showed no correlation between underselling and price suppression. MOFCOM failed to explain or investigate how subject import underselling could have significantly suppressed domestic prices in the first half of 2009 when the same underselling had no "significant" price suppressive effects between 2006 and 2008. Thus, there is no evidence to support MOFCOM's price suppression finding. By failing to recognize or consider that the domestic industry's prices increased faster than its costs between 2006 and 2008, MOFCOM also therefore failed to base its analysis of price suppression on an objective examination of positive evidence. By ignoring evidence that factors other than subject imports drove domestic price trends in the first half of 2009, MOFCOM failed to properly establish that price suppression was "the effect" of subject imports. By ignoring such evidence, MOFCOM also failed to base its price analysis on an objective examination of positive evidence.

B. CHINA'S IMPACT ANALYSIS IN ITS REDETERMINATION BREACHED ARTICLES 3.1 AND 3.4 OF THE AD AGREEMENT AND ARTICLES 15.1 AND 15.4 OF THE SCM AGREEMENT

29. MOFCOM's finding that subject imports had an adverse impact on the domestic industry does not satisfy the requirement for an objective evaluation of "all relevant economic factors and indices having a bearing on the state of the industry." In addressing impact, MOFCOM ignored evidence that the domestic industry's performance improved according to almost every other measure during the period. MOFCOM also ignored evidence that the domestic industry's rate of capacity utilization during the period was dictated by the domestic industry's decision to increase capacity well in excess of demand growth. It also failed to address evidence that domestic industry end-of-period inventories were not significant relative to domestic industry production or shipments.

30. MOFCOM's finding that subject import competition had an adverse impact on the domestic industry's rate of capacity utilization over the 2006-2008 period does not reflect an "objective examination" because it is clearly contradicted by the record evidence. Capacity utilization was increasing at the same time subject imports were also increasing. Critically though, an objective examination would consider this trend in conjunction with the record evidence regarding the domestic industry's own capacity expansion in excess of demand, which MOFCOM ignored. Moreover, subject import competition could not have reduced domestic industry output between 2006 and 2008, and by extension domestic industry capacity utilization, because subject imports did not increase their share of apparent consumption at the expense of

the domestic industry. Had the domestic industry not expanded its capacity in excess of apparent consumption growth, the domestic industry's increase in share of apparent consumption would have translated into a higher rate of capacity utilization. Thus, MOFCOM's finding was not based on an "objective examination" of "positive evidence" in breach of Article 3.1 of the AD Agreement and Article 15.1.

31. MOFCOM also found that the increase in the domestic industry's end-of-period inventories was caused by subject imports. This finding too cannot be the result of an "objective examination". What MOFCOM crucially neglected to consider was the significance of that increase relative to the domestic industry's actual performance, including, how that increase related to the domestic industry's production and shipments.

32. MOFCOM's finding that subject imports had an adverse impact on the domestic industry from 2006 to 2008 rests primarily on its flawed findings regarding capacity utilization and end-of-period inventories, which failed to reflect an objective examination of positive evidence, as discussed above. In light of MOFCOM's dependence on these flawed findings, MOFCOM's analysis that the domestic industry was adversely impacted is unsubstantiated. Moreover, in contrast to MOFCOM's finding, the record evidence clearly indicates that the domestic industry's performance improved markedly according to almost every measure during this period, when the bulk of the increase in subject import volume and market share took place. Therefore, MOFCOM's examination and evaluation was not based on an "objective examination" of "positive evidence."

C. MOFCOM'S CAUSAL LINK ANALYSIS IN ITS REDETERMINATION BREACHED ARTICLES 3.1, 3.5, 12.2, AND 12.2.2 OF THE AD AGREEMENT AND ARTICLES 15.1, 15.5, 22.3, AND 22.5 OF THE SCM AGREEMENT

33. MOFCOM's causation analysis in its redeterminations remains as flawed as the one it provided in its original determination because MOFCOM continues to (1) ignore record evidence that subject import volumes did not increase at the expense of the domestic industry; (2) relies on flawed analysis of price undercutting and suppression; and (3) fails to reconcile its analysis with evidence that the domestic industry's performance *improved* as subject import volume and market share increased.

34. Here, MOFCOM cited no evidence that the increase in subject import volume or subject import price competition was injurious to the domestic industry. During that same period, the domestic industry increased its market share to *an even greater degree* than subject imports. With respect to the price effects of subject imports, MOFCOM relied on its flawed price comparisons and finding of price suppression. Further, MOFCOM disregarded evidence that subject import competition was significantly attenuated because nearly half of subject import volume consisted of chicken paws, which the domestic industry could not produce in quantities sufficient to satisfy demand.

35. MOFCOM's findings on import volume and market share are clearly contradicted by evidence on the record. For example, MOFCOM failed to address evidence that subject imports

could not have injured the domestic industry because the small increase in subject import market share did not come at the expense of the domestic industry, which also *gained* market share during the POI. MOFCOM also failed to address USAPEEC's argument that subject import competition was substantially attenuated by the fact that nearly half of subject imports during the period of investigation, and 60 percent of the increase in subject import volume, consisted of chicken paws. MOFCOM did not address the issue in its final determinations or in its redetermination.

36. MOFCOM's causation analysis is inconsistent with the obligations of Articles 3.1 and 3.5 of the AD Agreement and Articles 15.1 and 15.5 of the SCM Agreement because the analysis disregarded evidence that subject import volume did not increase at the expense of the domestic industry. In addition, MOFCOM's causation analysis is inconsistent with Articles 3.1 and 3.5 of the AD Agreement and Articles 15.1 and 15.5 of the SCM Agreement because it was based on MOFCOM's flawed price and impact analyses.

37. MOFCOM's determination of a causal link rested on its finding that subject import volume and market share increased significantly and contemporaneously with certain trends exhibited by the domestic industry. But relevant record evidence indicated that the increase in subject import volume and market share did not negatively impact the domestic industry because the domestic industry gained market share during the same period. MOFCOM does not examine or explain such evidence, contrary to Article 3.5 of the AD Agreement and Article 15.5 of the SCM Agreement. Additionally, with no evidence linking the increase in subject import and market share to material injury, MOFCOM's causal link analysis also failed to demonstrate that any material injury suffered by the domestic industry was the effect of subject import volume, as required under Article 3.5 of the AD Agreement and Article 15.5 of the SCM Agreement.

38. Because MOFCOM's deficient underselling analysis is the sole basis for its finding that subject imports suppressed domestic like product prices, and other evidence ignored by MOFCOM contradicts the finding, MOFCOM's price suppression finding, too, is WTO-inconsistent. Moreover, given that domestic like product prices increased over the period examined, there was no evidence of price depression. With no evidence that subject imports suppressed or depressed domestic like product prices, MOFCOM failed to predicate its causal link analysis on an objective examination of positive evidence, in breach of Article 3.1 of the AD Agreement and Article 15.1 of the SCM Agreement for the reasons outlined above.

39. MOFCOM's causal link analysis was also deficient because it failed to address record evidence that the increase in subject import volume coincided with a significant *improvement* in the domestic industry's performance. MOFCOM does not explain how subject imports could have caused any material injury to the domestic industry when the domestic industry's worst performance of the period examined occurred in 2006, before any increase in subject import volume and market share. An investigating authority cannot be said to have examined "the relationship between subject imports and the state of the domestic industry" by focusing, without reasonable explanation, solely on a discrete portion of the period of investigation. By failing to reconcile its causation analysis with evidence that the increase in subject import volume and market share coincided with strengthening domestic industry performance, MOFCOM failed to conduct an objective evaluation of positive evidence.

40. MOFCOM ignored at least two compelling arguments concerning the absence of any causal link between subject imports and material injury. First, both USAPEEC and the United States argued that there could be no link between subject imports and material injury because subject import market share increased entirely at the expense of non-subject imports. This issue was clearly "material" to MOFCOM's causal link analysis. MOFCOM necessarily had to resolve the issue before relying on the increase in subject import volume and market share to establish a causal link. Consequently, MOFCOM was obligated to provide "all relevant information" on its resolution of the issue in the public notice of its final determinations. It was also obligated to provide the reasons for its rejection of U.S. respondents' argument concerning the issue.

41. USAPEEC also argued that subject imports could not have had an adverse impact on the domestic industry because over 40 percent of subject imports consisted of chicken paws, which Chinese producers were incapable of supplying in adequate quantities. By failing to provide the reasons for its rejection of USAPEEC's argument concerning chicken paws, MOFCOM breached Article 12.2.2 of the AD Agreement and Article 22.5 of the SCM Agreement. MOFCOM's misplaced response to USAPEEC's chicken paws argument also ignores evidence that the substantial proportion of subject imports consisting of chicken paws could not have been injurious. MOFCOM thus failed to base its causation analysis on an objective examination of positive evidence and an examination of all relevant evidence.

IX. CONCLUSION

42. For the reasons set forth in this submission, the United States respectfully requests the Panel to find that the challenged measures are inconsistent with China's obligations under the AD Agreement and SCM Agreement and that China has failed to implement the recommendations of the DSB to bring its antidumping and countervailing measures on broiler chickens from the United States into conformity with those agreements.