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 SECOND WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA

February 9, 2017

I. INTRODUCTION

1. The aggressive rhetoric found in China's rebuttal does not address – no less refute – the many flaws in MOFCOM's reinvestigation and redeterminations explained in the U.S. First Written Submission. Instead of addressing the legal issues in this dispute, China's rebuttal often focuses on irrelevant or extraneous matters. These types of arguments do not engage with the main task in this proceeding – namely, to determine whether China has brought its measures into compliance with the recommendations of the Dispute Settlement Body (DSB). In this second submission, the United States will continue to focus on demonstrating – through reference to record evidence – that MOFCOM failed to abide by China's WTO obligations.

II. CHINA CANNOT DEFEND MOFCOM'S PROCEDURAL FAILINGS DURING THE INVESTIGATION

A. China Breached Article 6.1 of the AD Agreement and Article 12.1 of the SCM Agreement through MOFCOM's Failure to Provide Notice to All Interested Parties of the Pricing Information It Required from Domestic Producers

2. The United States' claims under Article 6.1 of the AD Agreement and Article 12.1 of the SCM Agreement are straightforward. MOFCOM sought and obtained pricing data from domestic firms, which it then used to underpin its findings for its pricing analysis in its injury redetermination. In this process, MOFCOM failed to provide known interested parties, such as U.S. respondents, with any notice as to what specific data it required the domestic industry to produce. Without notice of what MOFCOM was requiring, U.S. respondents were not in a position to address effectively the significance of the pricing information – and therefore were denied the "ample opportunity to present evidence." Thus, MOFCOM breached China's obligations under Article 6.1 of the AD Agreement and Article 12.1 of the SCM Agreement because it failed to provide affirmatively to U.S. interested parties both (1) notice of the information it required from Chinese firms and (2) concomitantly, opportunity to present in writing all evidence that U.S. interested parties might consider relevant.

1. Notice 88

3. Notice 88 is simply the notice of initiation for the reinvestigation. It does not provide any details as to the specifics of the information that the investigating authority will be requesting, nor does it explain in detail the conduct of the investigation, including any opportunities for interested parties to present evidence.

2. The General Verification Letter

4. The General Verification Letter is deficient in both form and substance as to MOFCOM's obligations to provide notice. With respect to form, MOFCOM did not *notify* U.S. interested parties of the General Verification Letter. Although it appears the letter is made out as "To Whom it May Concern," China's rebuttal clarifies that the letter is addressed to Chinese domestic producers. Accordingly, the interested parties MOFCOM put on notice – i.e., to "alert or warn" – were Chinese domestic producers. Substantively, China fares no better. An

investigating authority's notation that it intends to conduct "on spot verifications," without any specifics regarding the precise information it requires from participating parties, falls far short of the requirements to provide notice to interested parties of information *required* by MOFCOM.

3. Chinese Producers' Summaries

5. The Chinese producer summaries suffer from two significant deficiencies, each of which preclude China establishing that it provided notice consistent with AD Agreement Article 6.1 and SCM Agreement Article 12.1: (1) China did not provide interested parties notice of the summaries, and (2) the content of the summaries themselves does not inform interested parties of the information MOFCOM required. First, to the extent China points to Exhibit CHN-14, a webpage that lists what China deems public documents, there is no indication as to when the materials were loaded on the webpage or that China provided any notice to interested parties that such information could be found there. Second, the summaries cannot be construed as notice of the *information that MOFCOM required*. They are summaries of what *information Chinese producers purportedly provided*. Knowledge of the precise parameters that MOFCOM required for this information is of course necessary to understanding the significance of and potential errors in the responses. Further, China glosses over the fact that these May 20 documents were ***submitted one day before*** release of the RID.

B. China Breached Articles 6.1.2 and 6.4 of the AD Agreement and Articles 12.1.2 and 12.3 of the SCM Agreement by Denying U.S. Interested Parties the Evidence Presented by the Domestic Producers Participating in the Reinvestigation

6. The Chinese producer summaries do not satisfy China's obligations as to AD Agreement Article 6.1.2 and SCM Agreement Article 12.1.2 because, once again, (1) China did not provide U.S. interested parties notice of the summaries, and (2) the content of the summaries themselves does not inform U.S. interested parties of the information MOFCOM required. Even assuming the notice was not deficient, the *only* information it provided to interested parties consisted of *summaries* of the pricing information. They do not *convey* the context surrounding what positions were advocated by the domestic producers providing the information, and the corresponding issues that MOFCOM sought to resolve during the reinvestigation.

C. China Breached AD Agreement Articles 6.4 and 6.2 and SCM Agreement Article 12.3 Because it Failed to Permit Access to Evidence that would have Enabled the Interested Parties to Prepare their Cases

7. China acted inconsistently with AD Agreement Articles 6.4 and 6.2 and SCM Agreement Article 12.3 because it failed to permit access to information to interested parties that would have enabled them to prepare their cases and defend their interests. MOFCOM failed, per AD Agreement Article 6.4 and SCM Agreement Article 12.3, to provide interested parties timely opportunities to see information that is relevant, non-confidential, and used by authorities in their investigation. China's public release of summaries does not excuse its failure to provide the context for these data, including the specific products for which pricing data was requested, that clearly fall within the scope of the articles. The same deficiencies apply to China's failure to

provide the precise identity of the four Chinese domestic enterprises that provided information to MOFCOM. Moreover, although an oral "hearing" took place on June 13, 2014, that "hearing" in no way provided interested parties with an opportunity to prepare presentations in defense of their interests. U.S. respondents were told by MOFCOM during this meeting that the re-investigation was closed, and that no further comments could be submitted by interested parties.

D. China's Failure to Disclose the Margin Calculations and Data Used to Determine the Existence of Dumping and to Calculate Dumping Margins was Inconsistent with AD Agreement Article 6.9

8. China's failure to disclose "essential facts," i.e., the margin calculations and data it relied upon to determine the existence of dumping by U.S. respondents Pilgrim's Pride and Keystone, was inconsistent with AD Agreement Article 6.9. Pilgrim's Pride was denied access to the data calculations from the original investigation in the reinvestigation while MOFCOM used a purported error in the data and calculations from the original investigation to increase the margin of Pilgrim's Pride. Without the *original* calculations and data, Pilgrim's Pride had no ability to identify precisely what had changed – which entirely denied Pilgrim's the opportunity to defend its interests. Similarly, MOFCOM did not abide by the obligation to ensure that a disclosure was made "in sufficient time for … [Pilgrim's] to defend … [its] interests." Likewise, Keystone was denied access to its data and calculations for the new antidumping rate that was set following the reinvestigation. Although Keystone did not cooperate in the reinvestigation, and MOFCOM applied facts available to it, Keystone was an "interested party," and its data and calculations were "essential facts" underlying MOFCOM's decision to maintain the duties.

III. CHINA CANNOT DEFEND MOFCOM'S ANTIDUMPING REDETERMINATION

A. China Has Not Rebutted U.S. Claims That MOFCOM Failed to Properly Allocate Tyson's Costs Under the Second Sentence of AD Agreement Article 2.2.1.1

9. The substantive obligation in the second sentence of AD Agreement Article 2.2.1.1 demands that investigating authorities deliberate and evaluate the "proper" allocation of costs based on its consideration of the evidence presented. The Panel recognized this fact. China's suggestion to the contrary is wholly unsupported and should be rejected.

10. China failed to meet the requirement in the second sentence of AD Agreement Article 2.2.1.1 to "consider all available evidence on the proper allocation of costs" because of MOFCOM's decision to adhere to a weight-based methodology while failing to allocate costs by weight to all products that derive revenue from the production of the product under consideration – including a failure to allocate costs to blood, organs, feathers, and other viscera. China itself recognized this problem in its prior WTO submissions and its redetermination, which explicitly noted, in support of its weight-based methodology, that apportionment of costs by weight is reasonable because it applies costs of the chicken equally across all products. Yet China chose to ignore these distortions and allocate costs over a more limited range of products – resulting in artificially inflated normal values for those products.

B. MOFCOM's Failure to Consider Any Alternative Allocation Methodologies for Pilgrim's Pride was Inconsistent with AD Agreement Article 2.2.1.1

11. China's suggestion that the general findings were exclusive of Pilgrim's Pride is not supported by the plain text of the Panel's decision. Moreover, China's suggestion that it did not need to consider Pilgrim's data at all because it believed the data to be flawed is flatly inconsistent with the original panel's finding that China failed to explain why its methodology led to a "proper" allocation of costs. The only way that China could have engaged in a neutral, fact-driven consideration of the "proper" allocation of costs, as required under the second sentence of AD Agreement Article 2.2.1.1, is if it had considered data submitted by Pilgrim's Pride.

C. China Acted Inconsistently with Article 9.4 of the AD Agreement on Account of MOFCOM's "All Others" Rate

12. China ignored its obligation under the general rule of Article 9.4 to calculate an all-others rate that "shall not exceed . . . the weighted average margin of dumping established with respect to the selected exporters or producers" and, instead, arbitrarily applied the highest antidumping duty rate found, as a result of the reinvestigation of Pilgrim Pride's rate. MOFCOM's investigation was limited to three companies: Tyson, Pilgrim's Pride, and Keystone. In the present circumstances, there were no new respondents that MOFCOM could potentially add to the investigation – nor were there any respondents who failed to cooperate. The exporters subject to MOFCOM's all-others rate were not asked to cooperate in MOFCOM's reinvestigation, and to apply the highest antidumping duty rate to them is inconsistent with Article 9.4.

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

13. China's use of facts available instead of Tyson's reported costs is inconsistent with Article 6.8 and Annex II of the AD Agreement. Contrary to China's suggestions, Tyson did not refuse access to, fail to provide, or other otherwise impede MOFCOM's ability to obtain requested information – such that MOFCOM could justify the application of facts available under Article 6.8. China's claims that Tyson made unexplained changes in its data during the redetermination proceedings are baseless. Rather, all changes made by Tyson during the reinvestigation were made at the specific request of MOFCOM and because MOFCOM altered its approach compared with the original investigation. China's argument rests on its belief that it can make an unreasonable and unrealistic demand for data in a reinvestigation that is fundamentally at odds with its requests during the original investigation, and that the investigating authority knows will be impossible for a respondent to provide in light of its standard accounting and business practice. Tyson made every effort that it could to comply with MOFCOM's requests for information, and cooperated to the best of its ability.

IV. MOFCOM'S INJURY REDETERMINATION BREACHED THE AD AND SCM AGREEMENTS

A. MOFCOM's Analysis of Underselling and Price Suppression Remains Inconsistent with AD Agreement Articles 3.1 and 3.2 and SCM Agreement Articles 15.1 and 15.2

14. There is nothing in MOFCOM's redetermination that establishes MOFCOM actually controlled "for differences in physical characteristics affecting price comparability" – a deficiency the Panel found in its report with respect to the original determination. In its redetermination, MOFCOM apparently sought and collected product-specific pricing data from only four of 17 domestic producers that in its view justified its original average unit value comparisons, without ensuring that its sample of domestic industry sales prices was representative. MOFCOM's redetermination fails to explain why MOFCOM chose these four producers, how it ensured their data was reliable, and how it could ensure that this limited data could be extrapolated to support MOFCOM's findings.

1. MOFCOM's Underselling Analysis Remains WTO-Inconsistent

15. MOFCOM based its finding that subject import underselling was significant on the very same comparisons of the average unit value of subject imports to the average unit value of domestic industry sales that the original panel found deficient. China readily acknowledges that MOFCOM's AUV comparisons remain the sole basis for its finding that subject imports undersold the domestic like product significantly, and that MOFCOM took no steps to adjust these data or otherwise control for differences in product mix in its redetermination.

16. Because the average unit value of subject imports differed dramatically by product, changes in the product mix of subject imports during the period of investigation would have directly influenced the average unit value of all subject imports during the period; for example, an increase in the proportion of lower-priced products from one year to the next would have caused the average unit value of all subject imports to decline. By failing to control for changes in the product mix of subject imports, MOFCOM's underselling analysis relied on subject import underselling margins that reflected not only differences in product mix between subject imports and domestic industry sales but also changes in the product mix of subject imports over time.

17. China argues that MOFCOM was justified in relying on its original average unit value comparisons because the product-specific pricing data it collected from four of the 17 domestic producers comprising the domestic industry suggested that the product mix of subject imports contained a higher proportion of high-value products than the product mix of domestic producers. But MOFCOM's AUV comparisons cannot be deemed objective or reliable. Specifically, both the magnitude and the trend of subject import underselling margins calculated from AUV comparisons would have reflected differences in product mix and changes in the product mix of subject imports over time. In other words, MOFCOM cannot proceed to compare and draw conclusions because no controls had been applied to ensure the underlying data – which by nature was in flux – was in fact comparable. Furthermore, MOFCOM's analysis of product-specific pricing data did not establish that subject imports were comprised of a higher proportion of high-value products because MOFCOM failed to ensure that its sample of domestic producers and their sales prices on specific products was representative.

2. MOFCOM's Price Suppression Finding Remains WTO-Inconsistent

18. As the panel and Appellate Body found in *China – GOES*, "*merely showing* the existence of significant price depression does not suffice for the purpose of Article 3.2 of the [AD] Agreement and Article 15.2 of the SCM Agreement . . . Thus . . . it is *not* sufficient for an authority to confine its consideration to what is happening to domestic prices alone for purposes of the inquiry stipulated in Articles 3.2 and 15.2." As the Appellate Body explained in *China – GOES*, the obligation of investigating authorities to consider whether subject imports have "explanatory force" for price depression and suppression, under AD Agreement Article 3.2 and SCM Agreement Article 15.2, and "the state of the domestic industry," under AD Agreement Article 3.4 and SCM Agreement Article 15.4, is an integral part of an authority's consideration of causation under AD Agreement Article 3.5 and SCM Agreement Article 15.5. Thus, MOFCOM was required under AD Agreement Article 3.2 and SCM Agreement Article 15.2 to establish that subject imports caused the significant suppression of domestic like product prices.

19. Because the principal basis for MOFCOM's finding that subject imports caused price suppression in the redetermination was its deficient underselling analysis, the Panel should find that MOFCOM's price suppression finding remains WTO-inconsistent. Although China also claims that MOFCOM supported its price suppression finding with reference to subject import volume, MOFCOM did not find in its redetermination that subject import volume alone suppressed domestic like product prices to a significant degree. On the contrary, MOFCOM emphasized in the section of its redetermination titled "Impact of the Import Price of the Subject Merchandise to the Price of the Domestic Like Products" that it was subject import underselling, not subject import volume, that suppressed domestic like product prices. It was MOFCOM's reliance on its deficient underselling analysis in finding price suppression that led the original panel to find MOFCOM's price suppression finding inconsistent. MOFCOM's continued reliance on its deficient underselling analysis in finding price suppression in the redetermination is likewise inconsistent with those articles.

20. MOFCOM also failed to establish that the alleged underselling by subject imports caused the significant suppression of domestic like product prices. Most of the alleged underselling by subject imports, which occurred between 2006 and 2008, was not accompanied by the "prevent[ion of] price increases, which otherwise would have occurred, to a significant degree," contrary to MOFCOM's finding that subject imports significantly suppressed domestic like product prices. MOFCOM not only ignored this evidence that contradicted its analysis of price suppression, but also failed to explain how subject imports could have suppressed domestic like product prices in the first half of 2009 when most of the increase in subject import volume and market share, and most of the alleged subject import underselling, did not suppress domestic like product prices between 2006 and 2008.

B. MOFCOM's Impact Analysis Breached AD Agreement Articles 3.1 and 3.4 and SCM Agreement Articles 15.1 and 15.4

21. MOFCOM was required under AD Agreement Article 3.4 and SCM Agreement Article 15.4 to not only examine the domestic industry's performance during the period of investigation but to also examine "the consequent impact" of subject imports on that performance.

Furthermore, an investigating authority cannot examine the impact of subject imports on the domestic industry during the period of investigation without considering the relationship between subject imports and domestic industry performance over the entire period of investigation. Doing so would not be an "objective examination," as required under AD Agreement Article 3.1 and SCM Agreement Article 15.1, because it would ignore periods in which subject imports coincided with improving or stable domestic industry performance, thereby making an affirmative determination more likely. Such an analysis would also ignore "relevant economic factors," namely the industry's improving performance over most of the period of investigation. Here, it was particularly important that MOFCOM examine the impact of subject imports on the domestic industry over the entire period of investigation because most of the increase in subject import volume and market share occurred between 2006 and 2008.

22. Yet, by China's own admission, MOFCOM's impact analysis focused on the first half of 2009, when the domestic industry's performance lagged, while failing to account for the impact of subject imports on the domestic industry between 2006 and 2008, when the domestic industry's performance strengthened. The record before MOFCOM established that during the three full years of the period of investigation, which coincided with most of the increase in subject import volume and most of the alleged underselling by subject imports, the domestic industry's performance improved substantially according to most measures. Although the domestic industry's end-of-period inventories increased, they remained insignificant relative to industry production and sales (equivalent to around 3 percent of both), as China concedes. By failing to account for the bulk of the record evidence showing that subject imports had no adverse impact on the domestic industry between 2006 and 2008, MOFCOM failed to conduct an evaluation of all relevant economic factors, contrary to AD Agreement Articles 3.1 and 3.4 and SCM Agreement Articles 15.1 and 15.4.

23. None of the factors cited by China in its first written submission excuse these deficiencies in MOFCOM's impact analysis. MOFCOM was required to consider the impact of subject imports on the domestic industry during the entire period of investigation, including those periods in which the industry's performance improved. Nor was MOFCOM entitled to "focus" its impact analysis "on the financial indicators that were consistently weak throughout the period of investigation," to the exclusion of other contradictory factors. That the domestic industry had pre-tax losses throughout the period of investigation says nothing about the changes or trends in the industry's financial performance. Nor does it take into consideration the multiple other "relevant economic factors" enumerated in AD Agreement Article 3.4 and SCM Agreement Article 15.4. The record before MOFCOM showed that the domestic industry's worst financial performance during the 2006-2008 period occurred in 2006, before the increase in subject import volume and market share. The data show that most of the increase in subject import volume and market share coincided with an improvement in the industry's financial performance, according to every measure. By ignoring these trends, just as it discounted all other positive trends in the industry's performance, MOFCOM failed to objectively evaluate "all relevant economic factors," in violation of AD Agreement Article 3.1 and 3.4 and SCM Agreement Articles 15.1 and 15.4. The third factor that China cites in defense of MOFCOM's impact analysis, alleged future subject import volume, was completely irrelevant to MOFCOM's analysis of the impact of subject imports on the domestic industry during the period of investigation. MOFCOM found that "U.S. producers of chicken products or broiler products are likely to expand exports to

China, and cause further adverse effects to China's industry." China's argument has two fundamental problems. First, this finding on likely future trends was not supported by the record. Second, future subject imports could have no impact whatsoever on the domestic industry during the period of investigation.

24. Finally, China is incorrect that MOFCOM's analysis of the domestic industry's capacity utilization supported its finding that subject imports adversely impacted the domestic industry during the 2006-2008 period. China argues that the domestic industry's capacity did not grow in excess of demand between 2006 and 2008 because the increase in capacity, at 780,700 MT, was less than the increase in demand, at 955,600 MT. The increase in the domestic industry's capacity between 2006 and 2008, equivalent to 81.7 percent of the increase in apparent consumption, was not proportionate to the industry's share of apparent consumption, which increased from 37.81 percent to 42.42 percent during the period. Only the domestic industry's 26.2 percent increase in capacity, in excess of the 17.0 percent increase in apparent consumption, prevented the industry's capacity utilization rate from improving just as dramatically as other measures of industry performance.

C. MOFCOM's Causation Analysis Breached AD Agreement Articles 3.1, 3.5, 12.2 and 12.2.2 and SCM Agreement Articles 15.1, 15.5, 22.3 and 22.5

25. MOFCOM's reliance on a flawed analysis of the effects of subject imports to demonstrate a causal link breaches the first sentence of AD Agreement Article 3.5 and SCM Agreement Article 15.5. Moreover, MOFCOM acted inconsistently with the second sentence of these articles by failing to base its causation analysis on "an examination of all relevant evidence." Specifically, MOFCOM ignored evidence that the increase in subject import volume and market share was not at the expense of the domestic industry, which increased its market share by an even greater amount.

1. MOFCOM Failed to Examine All Relevant Evidence in Breach of AD Agreement Articles 3.1 and 3.5 and SCM Agreement Article 15.1 and 15.5

26. MOFCOM explicitly predicated its finding of a causal link between subject imports and injury on "the increase of the import volume" and "the large volume of dumped imports originating in the U.S.," yet ignored that the 3.92 percentage point increase in subject import market share during the period of investigation did not prevent the domestic industry from increasing its market share by an even greater 4.38 percentage points. This evidence that subject imports captured no market share from the domestic industry during the period of investigation, and did not prevent the industry from growing its market share during the period, was clearly "relevant evidence" within the meaning of AD Agreement Article 3.5 and SCM Agreement Article 15.5 that MOFCOM was required to "objectively examine" under AD Agreement Article 3.1 and SCM Agreement Article 15.1. That MOFCOM "noted" the increase in the domestic industry's market share somewhere in the redetermination does not remedy this deficiency.

27. MOFCOM's isolated reliance on the increase in subject import volume and market share in finding a causal link between subject imports and injury also ignored that 40 percent of subject

imports, and 60 percent of the increase in subject imports, consisted of chicken paws that could not, as a factual matter, have injured the domestic industry. An uncontested fact on the record before MOFCOM, which China does not dispute, was that domestic producers were incapable of producing more chicken paws without increasing production of other chicken products to uneconomic levels. The clear implication of this irrefutable fact is that subject imports of chicken paws could not have injured the domestic industry.

28. China asserts that MOFCOM's reference to its preliminary finding that chicken feet were within the scope of the investigation somehow satisfied its obligation. MOFCOM's observation that chicken feet were within the scope was a complete *non sequitur*. By ignoring that subject imports of chicken feet could not have injured the domestic industry, MOFCOM's causation analysis relied on an increase in subject import volume and market share that was greatly inflated by the inclusion of non-injurious chicken feet. Relying on its defective impact analysis, MOFCOM's finding of a causal link between subject import and injury also ignored evidence that most of the increase in subject import volume and market share coincided with a strengthening of the domestic industry's performance between 2006 and 2008. By limiting its causation analysis to those portions of the period of investigation in which the industry's performance weakened while ignoring those portions coinciding with most of the increase in subject imports, MOFCOM failed to base its causation analysis on an "objective examination," and "all relevant evidence."

29. Contrary to China's claim that the United States has made no challenge to MOFCOM's analysis of adverse volume effects, the United States continues to argue, as it did before the original panel, that MOFCOM ignored evidence that the increase in subject import volume and market share coincided with strengthening domestic industry performance between 2006 and 2008, and did not prevent the domestic industry from increasing its own market share to an even greater degree. These deficiencies in MOFCOM's volume effects finding underscore the WTO-inconsistency of MOFCOM's causation analysis.

2. MOFCOM's Failure to Address Key Causation Arguments Raised by U.S. Respondents Violated AD Agreement Articles 12.2 and 12.2.2 and SCM Agreement Articles 22.3 and 22.5

30. MOFCOM's approach manifestly failed to provide "in sufficient detail . . . the reasons for the . . . rejection of relevant arguments." Specifically, China argues that MOFCOM "addressed" USAPEEC's and the United States' argument that subject imports had no adverse volume effects because they captured no market share from the domestic industry by stating that "[d]uring the whole injury investigation period, the quantity of the produce concerned had increased sustainably, and the imports prices were at a low level, which resulted in significant undercutting and suppression to the domestic like product . . . ." Conspicuously absent from MOFCOM's response is any mention or consideration of market share, and specifically the record evidence highlighted by USAPEEC and the United States showing that subject imports captured no market share from the domestic industry. Having failed to address the very point raised by USAPEEC and the United States, MOFCOM cannot be said to have provided "in sufficient detail" its reasons for rejecting the argument.

31. China also argues that MOFCOM "addressed" USAPEEC's argument that the 40 percent of subject imports consisting of chicken paws could not have injured the domestic industry by referencing its finding from the preliminary determination that "the scope of the investigated products includes Paw; therefore, the investigation authority proceeds by investigating the import of all the investigated products including Paw as a whole . . . ." That MOFCOM included the words "chicken paws" in its response to USAPEEC's argument revealed nothing about the "reasons" why MOFCOM decided to ignore completely uncontested evidence on the record that 40 percent of subject imports, and 60 percent of the increase in subject imports, consisted of non-injurious chicken paws.

V. CHINA'S TERMS OF REFERENCE ARGUMENTS ARE WITHOUT MERIT

32. The United States' Panel Request provides more information than is required under the DSU to present the claims at issue in this dispute. In particular, the United States often previewed some of the specific arguments it intended to advance by providing indicative examples of how China breached its WTO obligations. In each of the instances China complains of, the U.S. Panel Request has clearly stated the measures and claims at issue – and is thus entitled to have the Panel consider them. China's position essentially demands that Members not only identify claims, but that they must also provide in the Panel Request the precise arguments that will be presented in their submissions. The DSU does not compel this result.

33. The Panel Request clearly identifies that the measures at issue are those leading to the continued imposition of AD and CVD duties on U.S. broiler products – and further clarifies for China that the United States is concerned with MOFCOM's conduct during the reinvestigation. For each of its claims, the United States has identified the relevant obligation in the covered agreement. The United States has done so not only by identifying treaty provisions, but also by providing appropriate narrative descriptions when necessary. Moreover, the United States has also provided in some instances precise examples of how it might seek to demonstrate breach. The Appellate Body's prior analysis has correctly recognized that Members may provide indicative examples of how the claim might be established. Such an examples are simply foreshadowed arguments; they do not detract from the claim itself.

VI. CHINA HAS BREACHED AD AGREEMENT ARTICLE 1, SCM AGREEMENT ARTICLE 10, AND GATT ARTICLE VI

34. Because China has not rebutted the foregoing claims demonstrated by the United States, China as a consequence is also unable to rebut that it has breached AD Agreement Article 1, SCM Agreement Article 10, and Article VI of the GATT 1994.

VII. CONCLUSION

35. For the reasons set forth in this submission and its first written submission, the United States respectfully requests the Panel to find that China's measures are inconsistent with China's obligations under the AD Agreement, SCM Agreement, and the GATT 1994, and thus that China has failed to comply with the DSB recommendations in this dispute.