UNITED STATES – DEFINITIVE ANTI-DUMPING AND COUNTERVAILING DUTIES ON CERTAIN PRODUCTS FROM CHINA

(WT/DS379)

EXECUTIVE SUMMARY OF FIRST WRITTEN SUBMISSION OF THE UNITED STATES

June 8, 2009

I. Introduction

1. In this dispute, China urges the Panel to accept unsupported interpretations of WTO provisions so as to limit the effective applicability of the anti-dumping (AD) and countervailing duty (CVD) disciplines, and to ignore the particular features of China's economy, well documented on the records of the investigations at issue, that substantiate the determinations made by the Department of Commerce (Commerce) in those investigations.

II. Request for Preliminary Rulings

2. The alleged "failure of the United States to provide legal authority for [Commerce] to avoid the imposition of a double remedy" is not a "specific measure at issue" in this dispute and, accordingly, is not within the Panel's terms of reference. China's complaint is not about the absence of any "legal authority," but a requirement it believes to exist under U.S. law to apply AD and CVD measures in a way that results in the alleged "double remedy." By failing to identify the U.S. legal provisions underlying this alleged requirement, China denied the United States and third parties notice, to which they were entitled under Article 6.2 of the DSU, of the measure that give rise to the alleged impairment of benefits at issue in this dispute.

3. In addition, by introducing this alleged "measure" for the first time in its panel request – and not in its request for consultations – China seeks to expand the scope of the dispute and enlarge the Panel's terms of reference. In its consultations request, China explicitly limited the matter at issue to determinations and orders issued in connection with eight specific investigations by Commerce. Notwithstanding this clear limitation of the scope of the dispute, in its panel request China went beyond those specific, identified investigations to add claims against this wholly new "measure." China's addition of this new "measure" converted the dispute from one limited to a series of "as applied" claims to a dispute that now includes a "measure" challenged "as such."

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

4. Commerce's determinations in the challenged CVD investigations that certain Chinese state-owned enterprises (SOEs) and state-owned commercial banks (SOCBs) were public bodies were based on a proper interpretation of the term "public body" in Article 1.1(a)(1) of the SCM Agreement. 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 by the government, but not necessarily authorized to exercise, or in fact exercising, government functions.

5. The ordinary meaning of the term "public" includes the following: "belonging to, affecting, or concerning the community or nation"; "[r]elating or belonging to an entire community, state, or nation"; "of or relating to the people as a whole; that belongs to, affects or concerns the community or the nation"; and "[i]n general, and in most of the senses, the opposite of *private*." However one examines the term "public," the ordinary meaning of that term includes the notion of belonging to, or owned by, the state. If an entity is owned by the state, the ordinary meaning of the term "public" indicates that such entity can be a "public body".

6. The context of the term "public body" supports this interpretation. The SCM Agreement uses two different terms in referring to the types of entity that can provide a financial contribution, "government" and "public body." Thus the terms "government" and "public body"

must have distinct and different meanings. China mistakenly conflates these two terms, suggesting that they are "functional equivalents". This cannot be the case, or there would have been no need to use two different terms in Article 1.1(a)(1) of the SCM Agreement.

7. China's reliance on the definition of the term "public entity" in the GATS as context for the interpretation of "public body" is also inappropriate, as the terms are different, and the two agreements relate to different subject matter. The Working Party Report on China's accession, however, is relevant context and provides a recognition by China that its state-owned enterprises are public bodies that provide financial contributions and a commitment by China to this effect.

8. China's interpretation of "public body" also cannot be reconciled with the object and purpose of the SCM Agreement, which the Appellate Body has explained 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 SOEs to avoid the reach of the SCM Agreement.

9. The meaning of the term "public body" was at issue in the *Korea – Commercial Vessels* dispute. The panel there concluded that "an entity will constitute a 'public body' if it is controlled by the government (or other public bodies)." That panel's reasoning is consistent with the ordinary meaning of the term "public body" in its context and in light of the object and purpose of the SCM Agreement. Majority government ownership can demonstrate control.

10. Commerce's determinations that certain state-owned enterprise producers of hot-rolled steel, rubber, and petrochemicals are "public bodies" are consistent with Article 1.1(a)(1) of the SCM Agreement. Commerce applied a rule of majority ownership to determine whether an entity was a public body. Because Commerce properly determined that certain SOEs and SOCBs were public bodies, no entrustment or direction analysis was required.

11. In addition, Commerce's treatment of sales made through private trading companies was proper and fulfilled the requirements of Article 1 of the SCM Agreement. China argues that Commerce was required to find that public bodies "entrusted or directed" the trading companies to sell goods to the respondents. China ignores the fact that the SCM Agreement contemplates situations in which the benefit might be received by different recipients. China appears to assume that Article 1.1 of the SCM Agreement requires there to be only one recipient, and that this recipient must receive both the financial contribution and the entire amount of the benefit. China has offered no basis for this assumption. In this case, the financial contribution occurred with the sale of goods (whether hot-rolled steel or rubber) by the public body SOEs to the intermediary trading companies. This government provision of goods then conferred benefits upon the respondent producers of *CWP*, *LWRP*, and *OTR Tires*, when the trading companies sold the goods to these respondents. Although the intermediary trading companies received the financial contribution and perhaps some benefit, this possibility does not preclude the respondent subject merchandise producers from receiving a benefit.

12. Commerce's finding in the *OTR Tires* CVD determination that SOCBs are "public bodies" is consistent with Article 1.1(a)(1) of the SCM Agreement. Commerce found that the Government of China holds dominant ownership stakes in the SOCBs. Outside commentators

have remarked that the government's ownership of banks is "exceptional." China does not dispute this. Given China's ownership of its banks, these banks are "public bodies."

13. China's argument that Commerce's benefit analysis undermines its public body determination conflates the "public body" question with the question of benefit. This is the same mistaken interpretation of Article 1.1 of the SCM Agreement rejected by the panel in *Korea – Commercial Vessels*.

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

14. The Appellate Body has previously acknowledged that Article 14 of the SCM Agreement provides flexibility, should not be interpreted or applied in an overly restrictive manner, and permits the use of out-of-country benchmarks in certain situations. In addition, paragraph 15(b) of China's Accession Protocol and paragraph 150 of the Working Party Report 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."

15. Commerce's determinations to use external benchmarks were based on findings that the dominant role of the Chinese government in various markets distorted prices and interest rates in China. Commerce used Chinese prices whenever they were available and appropriate as market benchmarks. Where the facts demonstrated that Chinese prices were distorted by the government's predominant role in a market and unsuitable as commercial benchmarks, Commerce used market-derived prices from outside of China.

16. China alleges that Commerce applied a "*per se* rule" that only considered the degree of state ownership of the industries. China mischaracterizes Commerce's decisions and ignores the detailed rationale Commerce provided for each of its factual conclusions. Commerce reviewed all record evidence and determined appropriate benchmarks on a case-by-case basis in each of the challenged investigations. Indeed, in the *OTR Tires* CVD investigation, based on record evidence, Commerce did not find government distortion of the PRC rubber markets, and used actual import prices and domestic purchase prices from private producers as benchmarks, even where the government owned the majority of the domestic production.

17. In the case of the government provision of hot-rolled steel, petrochemicals, policy loans, and land-use rights, however, Commerce determined, based on all of the evidence on the record of the investigations, that domestic prices and interest rates in China were distorted because of the predominant role of the Chinese government in the markets, rendering those domestic prices and interest rates unsuitable as benchmarks. Consequently, Commerce determined that it was necessary to use out-of-country benchmarks to measure benefit.

18. Furthermore, China's assertion that Commerce did not "make any effort whatsoever to ensure that these benchmarks related to prevailing market conditions in China" is without foundation. For input subsidies, Commerce relied upon world market prices and made adjustments to account for "prevailing market conditions," consistent with Article 14(d) of the SCM Agreement.

19. In evaluating the benefit of government-provided loans, after Commerce established that it would not be possible to use RMB-denominated loans provided in China, it developed an out-of-country benchmark interest rate to measure benefit. To do so, Commerce used a group of interest rates, rather than just one out-of-country interest rate, because various factors can impact national averages for interest rates. Commerce's benchmark accounted for the maturity of the loans, adjusted for exchange rate expectations through an inflation adjustment accounting for currency differences, matched lending during the same time periods, and factored in the quality of the countries' institutions, a known influence on interest rates. Through these means, Commerce calculated comparison interest rates that were tailored to approximate a "comparable commercial loan which the firm could actually obtain on the market," as required by Article 14(b) of the SCM Agreement.

20. China's argument that Commerce was required to use RMB-denominated loans as benchmarks, which would mean that Commerce was required to use in-country benchmarks because RMB-denominated loans are not available outside China, is untenable. China's position is inconsistent with the Appellate Body's interpretation of Article 14 of the SCM Agreement and the commitments China made in its Accession Protocol. Moreover, under China's interpretation, assuming the absence of any commercial loans in a particular currency, if a government provides loans in that currency, it would not be possible for another Member to measure benefit at all. Not only does the text of Article 14 not require that interpretation, but such an outcome would be incongruous with the flexible nature of the guidelines in Article 14 and the object and purpose of the SCM Agreement to permit Members to fully offset the benefit of injurious subsidies.

21. China's argument that Commerce improperly used a yearly average LIBOR rate as a benchmark is without support. Article 14(b) of the SCM Agreement contains no preference for a daily rate over a yearly average. The benchmark developed by Commerce for these loans matched the duration and the currency denomination, and was structured on the same basis as GTC's loans (LIBOR plus a spread). In light of the flexibility afforded by Article 14, Commerce's comparison was consistent with the guideline in Article 14(b) of the SCM Agreement.

22. Similar to its position on RMB lending, China argues that Article 14(d) of the SCM Agreement prevents Members from ever using an out-of-country benchmark to measure the benefit of land-use rights provided by a government. China's position is inconsistent with the Appellate Body's interpretation of Article 14 of the SCM Agreement and the commitments China made in its Accession Protocol.

23. Based on record information, Commerce determined to measure benefit by comparing respondents' land-use rights to the sales of certain industrial land in industrial estates, parks, and zones in Thailand. By selecting land prices in a country with a comparable per capita GNI and population density and by using prices for comparable types of land (*e.g.,* industrial zones, allocated versus granted land-use rights), the comparison prices reasonably reflected the "prevailing market conditions for the good or service in question," while at the same time ensuring that the benefit calculation did not contain distortions caused by China's predominant role in the market.

V. 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. Commerce was under no obligation to provide a credit in its benefit calculations for instances in which China provided rubber for adequate remuneration, *i.e.*, when China did not provide a subsidy, in the *OTR Tires* CVD investigation. China's argument to the contrary is based on a misreading of the SCM Agreement and the GATT 1994, coupled with a misapplication of the reasoning in Appellate Body reports.

25. Article 14 of the SCM Agreement provides investigating authorities flexibility in the methodology applied to calculate the benefit of a subsidy. Article 14 does not prescribe any particular level of aggregation at which the calculation of subsidy benefit must be conducted, but instead permits investigating authorities to apply methodologies that account for different factual situations and the conditions under which the subsidy was provided. Additionally, the text of Article 14 explicitly pertains to the calculation of the "benefit" to the recipient. The concept of "benefit" relates only to situations in which a firm receives a "favourable or helpful factor or circumstance" or "an advantage," rather than a detriment or disadvantage. Article 14 imposes no obligation on Members to conduct an "aggregate" analysis nor to provide credit in the benefit calculation when a government provides goods for adequate remuneration. Indeed, China does not argue that such a requirement is even contained in Article 14.

26. Rather, China 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 to provide a credit in the benefit calculation for those instances in which China sold rubber for adequate remuneration. China mistakenly relies on the Appellate Body's zeroing reports to support its argument. However, the legal provisions on which those decisions are based apply solely to AD determinations and do not apply to CVD determinations. 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.

27. 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.

28. 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. China's interpretation would 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. China's interpretation of Article 14 thus fails to read that article in light of the object and purpose of the SCM Agreement, and for that reason as well, China's interpretation must be rejected.

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

29. China fails to identify any provision of the SCM Agreement or GATT 1994 with which Commerce's benefit determinations are purportedly inconsistent. China merely asserts that Commerce was required to determine the benefit conferred upon trading companies engaged in buying and selling an input product, in addition to determining the benefit conferred upon producers of the merchandise that was the subject of Commerce's CVD investigations. 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. To the extent that a trading company may have received a benefit from the financial contribution provided by an SOE, and some portion of the benefit of that financial contribution, in effect, passed through the trading company to a producer of subject merchandise, Commerce accounted for this and properly calculated the benefit conferred upon the producer of subject merchandise. To do so, 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 effectively "passed through" the trading companies and was conferred upon producers of subject merchandise.

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

31. China challenges Commerce's specificity determination for policy lending with respect to the *OTR Tires* CVD investigation, though not with respect to the other CVD investigations in which Commerce made similar specificity findings for similar policy lending subsidies. Commerce found policy lending in the *OTR Tires* CVD investigation specific because the loans were provided as part of government programs guiding financial institutions to lend to tire producers. This finding was based on evidence in the record of the *OTR Tires* CVD investigation, which contains central, provincial, and municipal-level government plans and policies that guided lending to a group of industries, including the tire industry.

32. 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 three points that China asks the Panel to examine are not the elements that Article 2.1(a) of the SCM Agreement contains, and on that basis alone, China's argumentation should be rejected.

33. 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 (*i.e.*, financial contribution and benefit).

34. The central, provincial, and municipal policy documents each clearly substantiate that the various levels of government guided lending to a *group* of industries, which included the OTR

tire industry. The policies focus on stimulating the quantity of credit, or the availability of credit at all, rather than reducing the price of credit. The policies target certain industries for the direction of credit, and prohibit credit 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.

35. Evidence on the record of the *OTR Tires* CVD investigation showed that the SOCBs acted pursuant to the central, regional, and municipal government policies in making their lending decisions. Thus, contrary to China's arguments, Commerce correctly determined that SOCBs do, in fact, act pursuant to industrial policies in making loans.

36. China also challenges Commerce's specificity determination for land-use rights in the *LWS* CVD investigation. Pursuant to Article 2.2 of the SCM Agreement, a subsidy is specific if it is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority. Commerce determined that Huantai County created New Century Industry Park for the purpose of providing selected companies, including Aifudi, with land-use rights. Thus, Huantai County limited this land-use rights subsidy to enterprises located in a designated geographical region.

37. New Century Industry Park meets the ordinary meaning of a designated geographical region. There is no basis in the SCM Agreement for the narrower definition for which China argues, and, in any event, the New Century Industry Park meets the requirements of China's narrower definition.

38. 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, the only difference between Articles 2.1(a) and 2.2 of the SCM Agreement 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. However, even if they were not located within a designated geographical region, the subsidy granted to them would nevertheless be specific pursuant to Article 2.1(a) by virtue of the explicit limitation. China's interpretation of Article 2.2 would render that provision redundant, which is incompatible with the rules of treaty interpretation. Furthermore, China's interpretation of Article 2.2 is also contrary to Article 8.1(b) and 8.2(b) of the SCM Agreement.

39. As demonstrated in the record, the land-use rights subsidy at issue was used as an incentive to relocate producers to the New Century Industry 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 park. The fact that Huantai County granted other types of land-use rights to other leaseholders for other purposes outside the industrial park is irrelevant to determining whether the particular subsidy at issue was only accessible to enterprises within the industrial park. Interpreting Article 2.2 of the SCM Agreement as requiring an investigating authority to find that the benefit was not available to any enterprise outside of the designated geographical region would be too restrictive and would enable circumvention of the subsidies disciplines.

VIII. 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

40. The WTO agreements and their predecessors have always recognized that the dumping and subsidization of imports are distinct unfair trade practices, to which, where they cause injury, Members are entitled to apply separate remedies. Beginning with the signing of the GATT in 1947, separate rules have generally governed the conduct of AD and CVD proceedings. The separate nature of the two remedies was recognized in the separate Tokyo Round AD Code and Subsidies Code, and subsequently in the Uruguay Round AD Agreement and SCM Agreement.

41. The GATT Contracting Parties reinforced the separate nature of the remedies available from AD and CVD proceedings by providing for only one instance – set forth in Article VI:5 of the GATT 1994 – in which both remedies may not be applied to the full amount provided for in Article VI of the GATT 1994. As the only provision linking the remedy in an AD proceeding with the remedy in a CVD proceeding, Article VI:5 reveals that Members considered when it would be appropriate to constrain Members' resort to the concurrent application of AD and CVD remedies, and agreed that it would be appropriate only where imposing AD duties together with CVDs would compensate for "the same situation of dumping or export subsidization."

42. Article 15 of the Tokyo Round Subsidies Code provides further evidence that parties to the Code considered that no other provision in the GATT 1947 contained such a requirement. The addition of Article 15 would not have been necessary if there had been any other restriction on the concurrent application of AD and CVD measures to exports from non-market economy (NME) countries. The disappearance of that provision in the successor SCM Agreement reinforces the presumption, created by the express limitation in Article VI:5 itself, that WTO Members never agreed on such a prohibition.

43. China's Accession Protocol makes clear that Members, including China, contemplated the concurrent application of CVD and AD measures to China, in full, notwithstanding China's continued treatment as a non-market economy country. In paragraph 15(a) of its Accession Protocol, China agreed that Members, when determining price comparability in AD proceedings involving imports from China, have the right to use special measurement methodologies that are not based on a strict comparison with domestic prices or costs in China. In other words, Members may apply AD duties to offset the full dumping margins, while treating China as a non-market economy country. Paragraph 15(b) makes clear that Members also have the right to apply the WTO's CVD rules to imports from China. Nothing in paragraph 15 limits a Member's right to concurrently apply both remedies.

44. China argues that the AD duties imposed by Commerce are, in fact, really CVDs, and therefore the duties should be added together when examining their consistency with the provisions of the SCM Agreement that limit the level of CVDs that may be imposed. Based on this theory, China argues that the United States acted inconsistently (i) with Article 19.4 of the SCM Agreement because the AD duties and CVDs, taken together, are in excess of the amount of subsidy found to exist, and (ii) with Article 19.3 of the SCM Agreement because the AD duties and CVDs, taken together, are in excess of the "appropriate amounts" of the CVDs. However, the GATT 1994 and the SCM Agreement define a CVD as a duty "levied for the purpose of offsetting" any subsidy. The AD duties calculated on the basis of Commerce's non-market methodology cannot be equated with CVDs, as China suggests, because the AD duties are levied to offset *dumping* of imported products that have caused injury. Commerce's use of the methodology expressly provided for in China's Accession Protocol to calculate dumping margins

in the investigations at issue does not somehow transform the *AD duty* itself into a CVD. China does not contest the fact that the duties imposed pursuant to the four CVD investigations at issue in this dispute are themselves *not* in excess of the levels permitted under Articles 19.3 and 19.4.

45. In respect of Article I:1 of the GATT 1994, the United States notes, as a threshold matter, that China makes "as such" and "as applied" claims of inconsistency. With regard to the "as applied" claims, China has failed to substantiate this claim because it has not identified "like products" to which the alleged "advantage" is applied. In any event, with respect to the two aspects of the calculation of the dumping margin discussed by China, Commerce treats products from China no differently than it treats products from other Members. Just as it would in an AD proceeding involving a product from a market economy, Commerce did not deduct CVDs in calculating the export price of a product in any of the four AD proceedings at issue in this dispute. Similarly, Commerce did not add the amount of subsidies actually received to the cost of production of any Chinese producer in the four AD investigations at issue in this dispute.

46. Moreover, China fails to recognize that a number of WTO rules explicitly recognize that, in the context of AD and CVD proceedings, a Member may—and in some circumstances must—accord certain treatment to products from one Member that may not be accorded to like products from another Member. These include Paragraph 2 of the *Ad* Note to Article VI:1 of the GATT 1994, Article 2.2 of the AD Agreement, Article 14(d) of the SCM Agreement, and paragraph 15 of China's Protocol. Given the explicit authorization for such actions, it is clear that, as in the present dispute, these actions, where they conform to the requirements of these other WTO provisions, are not inconsistent with Article I:1.

47. Finally, China has failed to demonstrate the theoretical premise of each of its "as such" and "as applied" claims, namely, that a so-called double remedy *inheres* in the concurrent application of AD duties calculated using a methodology not based on a strict comparison of domestic costs and prices in China and CVDs. For example, first, China's theory fails to account for the fact that subsidies may easily reduce the normal value determined pursuant to the NME methodology by reducing the *quantity* of factors consumed by the NME producer in manufacturing the product at issue. Under Commerce's methodology, multiplying the surrogate factor values by lower factor quantities results in lower normal values and, hence, lower dumping margins. Second, one of the premises underlying China's argument–that subsidies reduce costs *pro rata*–is unsubstantiated and inconsistent with how many subsidies may be offered and used in the real world. Other weaknesses in China's theory reinforce the failed premise of its claims.

IX. The United States Remained Available for Consultations With the Government of China Before Initiation and Throughout Each Investigation, and Afforded Interested Parties Ample Time and Numerous Opportunities to Submit Relevant Information in the Investigations

48. China claims that the United States did not comply with its obligation under Article 13.1 of the SCM Agreement because the United States did not formally invite China for consultations before examining, within the same investigation, information received about new subsidies that had not been identified in the application under Article 11. Contrary to China's reading, the only "investigation" referred to in Article 13.1 is the investigation triggered by the filing of a duly substantiated application as provided for in Article 11, and not by the filing of information on newly-reported subsidies. This is confirmed by additional provisions in the SCM Agreement that

clarify that the procedural focus for purposes of consultations is whether the investigation covers a *product* that is alleged to have been subsidized and imports of which are causing injury, so that the examination of additional subsidies on a product already subject to investigation would not constitute a new "investigation."

49. China similarly argues that the United States did not comply with its obligation under Article 12.1.1 of the SCM Agreement by failing to provide 30 days for reply not only to the questionnaire issued at the outset of an investigation, but to subsequent requests for information as well. Understood in its proper context, including Annex VI of the SCM Agreement, the obligation in Article 12.1.1 to provide thirty days for reply applies only to the former, and not to the latter. China's reliance on the Appellate Body's statement in *Mexico – Rice* that Article 12 of the SCM Agreement "as a whole" provides for evidentiary rules and due process rights that apply "throughout" an investigation is misplaced. Not only does this statement fail to address the particular text of Article 12.1.1, but China's argument overlooks the Appellate Body's recognition in *US – Hot-Rolled Steel* that Article 6.1.1, a parallel provision in the AD Agreement, "prescribes an absolute minimum of 30 days for the *initial response to a questionnaire*."

50. China argues that, by failing to request certain necessary information from respondents in the *CWP* and *LWRP* CVD investigations and consequently relying on facts available, the United States acted inconsistently with Articles 12.1 and 12.7 of the SCM Agreement. It was not until a very late stage in these investigations that Commerce was made aware that information about the amount of steel purchased through trading companies that came from SOEs was necessary to determine the existence of a benefit conferred on producers of the product subject to investigation. Commerce relied on evidence from the records of the investigations in order to make these determinations. Before any definitive rate of CVD is levied, respondents in the *CWP* and *LWRP* CVD investigations would be provided the opportunity to present evidence with respect to the amount of hot-rolled steel purchased from trading companies that was produced through SOEs.

X. Conclusion

51. For the foregoing reasons, the United States respectfully requests that the Panel grant the U.S. requests for a preliminary ruling and reject the remainder of China's claims.