

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

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

September 16, 2011

1. Mr. Chairman, Members of the Panel. The United States would like to begin by thanking you and the Secretariat for your efforts in the preparation for and conduct of this hearing.
2. We hope that the discussion held here yesterday and today has assisted the Panel in enhancing its understanding of the issues before it in this case.
3. If an observer had been listening solely to China's interventions yesterday, he or she might have come away with the impression that the practices of the U.S. Department of Commerce and International Trade Commission were the subject of this dispute. In that context, we would again note that China's description left out a number of important aspects of U.S. practice that are quite different from what MOFCOM did in this investigation.
4. To the extent that the Panel found the examination of such matters helpful to the task before it, we welcome further discussions along these lines. Nevertheless, we find it telling that China has chosen not to focus its attention on the actual Chinese measures at issue in this dispute, the actual record in the underlying investigation, and the application of WTO principles to that record.
5. China also at one point seemed to suggest that it is the responsibility of an interested party to piece together information that the investigating authority chose not to disclose or adequately summarize. First, this would be a highly speculative exercise. More fundamentally, the skill of a party in making educated guesses has no bearing on whether a breach of an investigating authority's WTO obligations exists.
6. We discussed a number of substantive issues on Thursday and will address them more fully in our future submissions. We also note that many of the third parties addressed the issues of initiation and the provision of non-confidential summaries, which we found helpful; particularly, the oral statements of Argentina, Honduras, and the European Union. We also found Japan's comments on the obligations of Article 12.2.2 of the AD agreement with regard to the dumping margin calculations particularly informative.
7. Before these hearings formally close, the United States would like to make a few brief comments relating to one of the substantive matters discussed yesterday. In particular, the United States would like to address the discussion before the Panel on Thursday concerning

MOFCOM's finding of significant price effects, as this discussion revealed fundamental flaws in China's arguments.

8. First, China variously suggested that the factual support for the price effects findings may be found in the public documents prepared by MOFCOM or in other public documents submitted by the parties that MOFCOM neither referenced in its essential facts disclosure nor expressly or implicitly adopted in any determination. In some instances, both the Panel and the United States are left to guess where MOFCOM has stated its factual findings and what these findings are. Such lack of transparency cannot be reconciled with the requirements of Article 12.2.2 of the AD Agreement and Article 22.5 of the SCM Agreement. Moreover, China cannot simultaneously posit that it satisfied its obligations under Article 6.9 of the AD Agreement and Article 12.8 of the SCM Agreement through the preliminary determination and essential facts disclosure, but that the disclosures made in these documents were not intended to be complete.

9. Second, while China argues that a price undercutting analysis was unnecessary, it simultaneously repeated MOFCOM's findings of "low" import prices as grounds for finding significant price depression and price suppression. A predicate of a finding of "low" prices is that an authority has undertaken an analysis of comparative prices. But China has thus far failed even to explain how it undertook any such price comparison analysis, much less to respond to the United States' detailed arguments about how any such analysis did not reflect an objective examination and was unsupported by positive evidence. As Japan stated today, "[t]he mere statement ... that 'the sale of the product concerned was kept at a low price' – would not be sufficient to explain the relevant information."

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