Check Against Delivery*

UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES ON CERTAIN PRODUCTS FROM CHINA
(WT/DS449)

OPENING STATEMENT OF THE UNITED STATES OF AMERICA AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL

July 2, 2013

Mr. Chairperson, members of the Panel:

1. On behalf of the U.S. delegation, I would like to thank you for agreeing to serve on the Panel. The United States appreciates this opportunity to present its views on the issues in this dispute. As the U.S. First Written Submission responds to the arguments China raised in its First Written Submission, in this oral presentation, the United States will focus on key legal and factual issues that China has misconstrued in its challenge.

2. It may be useful to begin by taking a step back and considering why are we here? In relation to China's Article X claims, we recall that this Article is entitled "Publication and Administration of Trade Regulations." The provisions of Article X:1 and X:2 are directed to the publication of trade regulations to provide notice and transparency to traders. China cannot seriously contend that the U.S. CVD regime, and its application to China, has suffered from a lack of transparency. To the contrary, the application of the CVD law to Chinese imports has always been rigorously open and transparent, leading in part to the many domestic administrative and court proceedings referenced by the parties.

3. Similarly, the provisions of Article X:3(b) are directed to ensuring that Members set up an appropriate structure so that tribunals or procedures may review administrative action and administrative agencies will then implement those decisions. Again, China cannot seriously contend that the United States has failed to set up such a structure for review or that the U.S. Department of Commerce is not bound by or does not implement such decisions. It is no exaggeration to say that officials of the Department may be held in contempt of court, and even jailed, if they were to fail to carry out such decisions.

4. Not surprisingly, because China has no basis for its claims, China tries to bring an entirely different meaning into these provisions. Rather than rules on notice and transparency, Article X:1 and X:2 become rules relating to the substantive content of trade regulations. Rather than rules on the structure and consequence of review of administrative action, Article X:3 becomes a quasi-constitutional rule prohibiting a legislature from acting once a non-final judicial opinion has been issued. As the United States will explain further in this statement, the plain meaning of these provisions is not that suggested by China. Further, the enactment of the *GPX* legislation does not even raise the factual circumstance that concerns China because China and its traders had ample notice and transparency both on the legislation itself and the application of the CVD law to China.

5. In relation to China's claim under Article 19.3 of the SCM Agreement, it is also useful to ask why we are here. The United States recognizes that the Appellate Body in DS379 reversed a panel report and found that a Member must investigate the extent of any double remedy when it simultaneously imposes antidumping duties under a non-market economy methodology and a countervailing duty to ensure that the latter is imposed "in the appropriate amounts" under Article 19.3 of the SCM Agreement. The U.S. Congress has acted already to require the Department of Commerce to investigate the extent of any so-called double remedy and to adjust the amount of antidumping duty if necessary. Therefore, the U.S. argument in this dispute is not directed to changing the U.S. approach in the future. There are two reasons we bring this issue of interpretation to the Panel.

6. First, we consider the Appellate Body's interpretation to be erroneous, and the more one reads its rationale the less appropriate its interpretation of Article 19.3 appears. The Appellate Body report starts with the identification of a supposed problem and then seeks to find an interpretive solution to that problem. But this approach has it backwards: if the provision claimed to be breached is properly interpreted and not found to be applicable to the situation the complaining party has brought forward, there is no "problem" under the covered agreements. In this statement and over the course of this meeting, we will continue to bring the errors in this interpretation to the Panel's attention.

7. Second, the Appellate Body's reading of "in the appropriate amounts" gives a meaning to that phrase which is not connected to its context in Article 19 or the rules for determining "appropriate amounts" in the SCM Agreement. By unmooring this phrase, the Appellate Body's interpretation raises the question of what other issues or considerations not set out in the SCM Agreement could be found to be encompassed by "appropriate". For this second reason, the United States respectfully requests the Panel to interpret Article 19.3 as a provision requiring that levies be imposed in a non-discriminatory fashion and consistent with the rules in the Agreement for determining the amount of subsidies.

8. Both sets of claims raised by China are flawed and should be rejected. In this statement we proceed to further detail some of those many flaws.

I. CHINA HAS CONFLATED THE LEGAL REQUIREMENTS AND CONCEPTS OF DOMESTIC LAW WITH THE REQUIREMENTS OF ARTICLE X

9. Before addressing the substance of China's Article X claims, it is particularly important to distinguish between China's arguments that relate to U.S. domestic law and the requirements of Article X of the GATT 1994. China has conflated the legal requirements and concepts of these two separate systems in its attempt to establish an interpretation of Article X that is unsupported by a plain reading of the text. For example, China's arguments regarding the so-called principle of "retroactivity" are based largely on U.S. constitutional law. Article X does not discuss the term "retroactivity," and the Appellate Body has observed that Article X:2 "does not speak to, and hence does not resolve," the issue of retroactivity.[1] As such, the purported principle cannot be the basis of China's claims regarding the *GPX* legislation.

10. As another example, China claims that Article X:2 prohibits certain *ultra vires* actions. Aside from the fact that China's whole assertion of *ultra vires* action is incorrect, such a concept is a matter of domestic law and cannot be recast as a WTO commitment. In other words, an alleged violation of U.S. domestic law does not equate to a breach of Article X:2. Rather, the

[1] U.S. – Underwear (AB), p. 21.

complaining party must provide a *prima facie* case of its WTO claim based on the text of Article X:2.

11. In this dispute, China has failed to provide a *prima facie* case that the *GPX* legislation is inconsistent with a plain reading of Articles X:1 and X:2, and that the U.S. actions with regard to the *GPX V* opinion is inconsistent with a plain reading of Article X:3(b).

12. As the United States will explain further below, the *GPX* legislation did not change or otherwise affect Commerce's existing approach of applying the U.S. CVD law to China. Specifically, the orders for the CVD proceedings listed in Appendix A of China's panel request have not been changed or otherwise affected by the *GPX* legislation. The law maintains the *status quo* for these orders.

13. Further, the opinion of a U.S. appellate court in *GPX V* never became final and therefore could not be implemented by Commerce. Rather, the *GPX V* opinion was appealed and the subsequent final decision in *GPX VI* held that Commerce was not prohibited from applying the U.S. CVD law to China.

II. CHINA'S CLAIMS UNDER ARTICLE X:1 OF THE GATT 1994 ARE WITHOUT MERIT

14. We will first address China's claims under Article X:1. China's claims depend on reading words into Article X:1 that simply are not there, and these claims thus are without merit. Article X:1 imposes two procedural requirements for the publication of certain measures that have been "made effective." The first is that the measure be "promptly published." The second is that the measure be published in such a "manner as to enable governments and traders to become acquainted" with it. China has not demonstrated that the U.S. publication of the *GPX* legislation was inconsistent with these obligations.

15. It is undisputed that the *GPX* legislation was enacted on March 13, 2012. On that same day, the *GPX* legislation was published in the *United States Statutes at Large*.[2] It would be impossible to publish the law any sooner or more promptly than the day that it was enacted. That is, there must be a measure in existence in order to determine whether it was published "promptly." Otherwise, the timing requirement of "promptly" would be meaningless.

16. Further, the *GPX* legislation was published in a manner such that governments and traders could become acquainted with it. The *United States Statutes at Large* is readily available to China, Chinese traders and other members of the public.

17. As such, the publication of the *GPX* legislation was not inconsistent with Article X:1. China, however, attempts to read into Article X:1 a substantive obligation that prohibits a measure from touching on events that have occurred prior to the publication of the measure. Such a reading is unsupported by the plain text of Article X:1.

18. Article X:1 does not address how a measure should be applied following its publication. In fact and contrary to China's assertions, Article X:1 itself recognizes that measures may affect events that have occurred prior to the publication of a measure. To provide two illustrations:

- For example, the term "made effective" is used in the past tense to convey the application of Article X:1 to measures that have been enacted or adopted at some point in the past. Along the same lines, the requirement in Article X:2 that certain measures not be "enforced" before publication clearly presumes both that measures could be effective before publication, just not enforced, and that some set of other measures could be enforced before publication. So the context of Article X:1 further confirms that Article X:1 contemplates that measures may affect events prior to publication of the measure.

- As another example, Article X:1 is applicable to "judicial decisions and administrative rulings of general application." Such decisions and rulings necessarily impose legal consequences on past events. China itself recognized this fact in paragraph 102 of its

[2] 126 STAT. 265 (Mar. 13, 2012) (CHI-1).

First Written Submission regarding the "inherently retrospective nature of judicial review."[3]

III. CHINA'S CLAIM UNDER ARTICLE X:2 OF THE GATT 1994 IS WITHOUT MERIT

19. Next, we will address China's claim that the *GPX* legislation is inconsistent with Article X:2. China's claim fails for the following reasons. First, China has failed to prove that the *GPX* legislation is covered by Article X:2. Second, even if found to be within the scope of Article X:2, China has failed to prove that the *GPX* legislation is somehow inconsistent with the obligation.

20. In order to fall within the scope of Article X:2, a measure of general application must be of a type that either (1) effects an advance in a duty rate or other charge on imports under an established and uniform practice, or (2) imposes a new or more burdensome requirement, restriction or prohibition on imports. China has failed to explain how the *GPX* legislation falls under either type. While the burden is on China to make a *prima facie* case, the United States notes that CVD laws provide the framework for determining a CVD duty. The law itself does not prescribe any particular duty rate, let alone effect an "advance" in such a rate, nor does it impose a requirement, restriction or prohibition on imports. Imports are only affected once the separate and distinct legal process of an investigation is completed.

21. Further, even aside from the fact that the *GPX* legislation is not one of the two types of general measures described above, Article X:2 further requires that such a measure cause a certain type of change from a previous measure. That is, Article X:2 requires that the measure either (1) effect *an advance* in a rate of duty under an established or uniform practice, or (2) impose a *new or more burdensome* requirement, restriction, or prohibition on imports.

22. The *GPX* legislation does not effect an *advance* in a rate of duty. The panel in *EC – IT Products* found that the term "advance" refers to those measures that "bring about" an "increase"

[3] China First Written Submission, para. 102.

in a rate of duty.[4] Such a connection must go beyond a mere influence. In other words, there must be a "demonstrable link between the measure at issue and the advance."[5] Consistent with the plain text of Article X:2, the panel in *EC – IT Products* found that a covered measure must change an existing approach in order to bring about an increase in a rate of duty. In this dispute, the *GPX* legislation has not changed Commerce's existing approach to apply the U.S. CVD law to China. Further, the *GPX* legislation has not changed any part of the CVD proceedings and orders listed in Appendix A of China's panel request. The CVD rates established through those proceedings remain the same as previous to the enactment of the *GPX* legislation.

23. Similarly, the *GPX* legislation does not impose a *new or more* burdensome requirement, restriction, or prohibition on imports. The term "new" is defined as "not existing before" or "existing for the first time."[6] The term "more" is defined as "in a greater degree" or "to a greater extent."[7] Thus, in order to fall within the scope of Article X:2, imports from China must face a requirement, restriction or prohibition that did not previously exist prior to the enactment of the *GPX* legislation, or face a burden of a greater degree than prior to the *GPX* legislation.

24. The *GPX* legislation imposes neither such condition. Prior to the enactment of the *GPX* legislation, imports from China were already subject to the U.S. CVD law. Thus, the law did not impose any condition that had not existed before. Further, the *GPX* legislation did not impose a greater degree of burden on such imports. None of the CVD proceedings cited in China's panel request have been disturbed by the *GPX* legislation. Rather, the law maintained the *status quo* for Commerce's existing approach and the existing CVD orders.

25. Based on these facts, China has failed to prove that the *GPX* legislation is within the scope of Article X:2. We are compelled to add that even aside from the fact that the law is not within the scope of Article X:2, China has failed to prove that the *GPX* legislation is inconsistent with Article X:2. China's claim under Article X:2 rests not on the specific language of the treaty article, but mainly on an incorrect reading of the Appellate Body's findings in *U.S. – Underwear*.

[4] *EC – IT Products*, para. 7.1107.
[5] *Id.*, para. 7.1105
[6] *The New Shorter Oxford English Dictionary* at 1912 (1993) (USA-52).
[7] *Id.* at 1829 (1993) (USA-53).

Specifically, China argues that such findings support the general proposition that Article X:2 "precludes retroactivity."[8]

26. The Appellate Body, however, specifically stated that it was improper for the panel in *U.S. – Underwear* to rely on Article X:2 to analyze the permissibility of whether a textiles safeguard could be "backdated."[9] The Appellate Body observed that Article X:2 "does not resolve" the issue of backdating, or what China has recast as retroactivity. Rather, the answer must lie in the relevant covered agreement. In *U.S. – Underwear*, the Appellate Body interpreted a specific article of the *Agreement on Textiles and Clothing* as creating a presumption that "a measure may be applied only prospectively."[10] It made no such similar findings for Article X:2. The United States notes that China has not alleged a breach of an obligation under the *Agreement on Textiles and Clothing* in this dispute, and as such, China's reliance on *U.S. – Underwear* is misplaced.

27. As such, China's claims under Article X:2 fail as a matter of law and fact. The state of U.S. law has always been that Commerce is not prohibited from applying the U.S. CVD law to NME countries. The *GPX* legislation maintained this *status quo*.

IV. CHINA HAS NO BASIS FOR A CLAIM UNDER ARTICLE X:3(b) OF THE GATT 1994

28. Next, we will move on to China's claims under Article X:3(b). China has alleged that the U.S. failure to implement a judicial opinion that was pending on appeal, known as the *GPX V* opinion, is inconsistent with Article X:3(b). Such a claim fails as a matter of fact and law.

29. As a factual matter, China is incorrect in its assertion that the *GPX V* opinion was a final decision that was not subject to appeal and had legal effect under the U.S. judicial system. Specifically, China fails to account for the fact that a "mandate" is required to finalize a U.S. appellate court opinion.

[8] China First Written Submission, para. 72.
[9] *U.S. – Underwear (AB)*, p. 21.
[10] *Id.*, p. 14.

30. The U.S. Federal Circuit itself has stated that a mandate was not issued for the *GPX V* opinion because the case was still under appeal.[11] Therefore, *GPX V* was not a final decision that could direct the court of first instance. Such non-binding opinions do not fall under the ordinary meaning of "decisions" under Article X:3(b).

31. The term "decision" requires that the court's opinion must put an end to the consideration of the case and result in a final judgment that is conclusive. Prior to the issuance of a mandate, the *GPX V* opinion was far from concluded, as it was still subject to change. Such changes could be made by the 3-person panel hearing the case, the U.S. Federal Circuit sitting *en banc* or the U.S. Supreme Court. As the United States demonstrated in its First Written Submission, there is established U.S. jurisprudence of U.S. appellate courts changing their opinions prior to the issuance of the mandate, either based on a clarification of the law or facts. For example, in the U.S. court case, *First Gibraltar Bank v. Morales*, submitted as U.S. Exhibit 72, a U.S. appellate court held that "[b]ecause the mandate is still within our control, we have the power to alter or to modify our judgment." The court went on to significantly alter its original opinion based on a clarifying law that had been enacted while the case was pending on appeal.

32. Further, because the mandate had not issued, the court of first instance could not implement the *GPX V* opinion as a matter of U.S. law. In the U.S. court case, *Kusay v. the United States*, submitted as U.S. Exhibit 75, a U.S. appellate court held that it was improper for a court of first instance to implement the appellate court's opinion prior to the issuance of the mandate. The U.S. appellate court held that "[u]ntil the mandate issues, the case is 'in' the court of appeals, and any action by the district court [or the court of first instance] is a nullity."[12] Similarly, the U.S. CIT, as the court of first instance, could not direct the implementation of the *GPX V* opinion prior to the U.S. Federal Circuit's issuance of a mandate.

[11] *GPX VI*, 678 F.3d at 1311 (CHI-7).
[12] *Kusay v. United States*, 62 F.3d 192, 194 (7th Cir. 1995) (USA-75).

33. Thus, contrary to China's assertion that the appeal of the *GPX V* opinion was a mere technicality, [13] the issuance of a mandate in the U.S. judicial system is crucial to finalizing what is, up until that point, a non-binding opinion. Prior to the issuance of the mandate, such an opinion is not within the scope of Article X:3(b).

34. The United States notes that even if the *GPX V* opinion could be considered a "decision" under Article X:3(b), the requirements of the treaty article still would not be applicable to *GPX V*. Article X:3(b) expressly recognizes that an administering authority need not implement a judicial decision that is under appeal. Specifically, it states that judicial decisions must be implemented "*unless* an appeal is lodged with a court or tribunal of superior jurisdiction within a prescribed time period."[14]

35. In *GPX V*, the United States filed a timely petition for rehearing before the U.S. Federal Circuit sitting *en banc*. In other words, the proceedings had not concluded and the United States had not exhausted its rights to appeal. In fact, the *GPX* litigation is still on-going. It is important to note that in the decision following *GPX V*, the U.S. Federal Circuit found that Commerce was not prohibited from applying the U.S. CVD law to China. As a mandate was issued for this decision, it binds and directs the court of first instance in its continuing review of Commerce's actions.

36. As a matter of law, China's claim under Article X:3(b) is not based on the text of the relevant WTO provision, but instead on other vague or irrelevant legal concepts. China has no basis for such an interpretation, as it must prove its allegations based on the specific language of the specific obligations of Article X:3(b).

37. As an example, China argues that "the intervention in a pending judicial proceeding by the legislative branch of the U.S. government" is incompatible with Article X:3(b). China's claim has no support in the text of the article. Article X:3(b) does not dictate the relationship between a domestic legislature and the judicial branch. Nor does it not prohibit the timing of

[13] China First Written Submission, para. 96.
[14] Article X:3(b) of the GATT 1994 (emphasis added).

when a piece of legislation may be enacted. In other words, Article X:3(b) does not prohibit the enactment of the *GPX* legislation because of pending domestic litigation. As the *GPX* litigation has been ongoing for the past five years, China's interpretation of Article X:3 would paralyze the ability of legislatures to enact laws and is unsupported by the plain text of the obligation.

38. What is required of Members under Article X:3(b) is to establish a framework for courts or tribunals to issue decisions independent from the administering authority. Such decisions stemming from this system would then be binding on the administrative agency. In other words, what is explicitly required under Article X:3(b) is that once the appeals process is concluded, however that process may be structured in the Member country, that final decision shall be implemented by the administering agency. China has not alleged, nor could it credibly, allege, that U.S. court opinions do not govern the practice of U.S. agencies. Instead, China seeks a contorted reading of Article X:3(b) to turn the obligation in that provision into something else altogether – a limitation on legislative action rather than a requirement for agencies to be governed by final judicial action.

V. CHINA'S CLAIM THAT THE UNITED STATES ACTED INCONSISTENTLY WITH ARTICLE 19.3 OF THE SCM AGREEMENT MUST BE REJECTED

39. We will now discuss China's claims under Article 19.3 of the SCM Agreement. China has advanced claims with respect to 31 sets of determinations. Yet, at each step in this case – in particular its panel request, and, most importantly, in its first written submission – China has failed to present and substantiate its claims through a discussion of the facts, and arguments. China relies on sweeping generalizations instead of presenting the facts and legal arguments for each challenged determination necessary to sustain China's burden of proof.

40. As complainant, China has certain responsibilities. China must demonstrate, with specific evidence from the determinations challenged, how Commerce's determinations were inconsistent with the requirements of the SCM Agreement. China must link its legal arguments to the facts and evidence of each of the determinations it challenges. China, however, has departed from this straightforward method for supporting its claims; instead, it has opted for an

approach that is rather peculiar. Despite advancing claims that dozens of Commerce's findings were inconsistent with the SCM Agreement, China barely discusses Commerce's determinations at all.

41. Nonetheless, China "requests the Panel to find that each of these determinations is inconsistent, as applied, with Article 19.3."[15] But China declined to include in its first written submission virtually any discussion of the facts at issue in the determinations it challenges here. Accordingly, China has failed to establish a *prima facie* case.

42. China seems to ask the Panel to fill in the blanks and answer the questions China has not addressed. Of course, it is not proper for China to ask this of a panel, and China should be mindful of the Appellate Body's caution that asking a panel to make findings "in the absence of evidence and supporting arguments," is to ask a panel to act inconsistently with its obligations under Article 11 of the DSU.[16] China must make its own case, and it has failed to do so.

43. Exemplifying China's failure to make its own case, China argues that "the USDOC took no steps in any of these investigations and reviews to investigate and avoid the double remedies that were likely to occur."[17] But again, this argument is devoid of factual support or analysis. It is telling that, despite challenging 31 sets of determinations, China cites not to a single one of those determinations in its first written submission.

44. As explained in the U.S. first written submission, even had China actually presented the Panel with evidence and analysis in its first written submission, an examination of the 31 challenged sets of determinations would reveal that respondent parties had the opportunity to present Commerce with evidence and arguments demonstrating the existence of overlapping remedies and that Commerce fully addressed such evidence, or lack thereof. Commerce also fully addressed all arguments raised by respondent parties relevant to the issue.

[15] China First Written Submission, para. 126.
[16] *US – Gambling (AB)*, para. 281.
[17] China First Written Submission, para. 125.

45. China's lackluster effort in making its legal argument raises an eyebrow. Rather than engage in a textual or contextual analysis of the obligations imposed by Article 19.3 of the SCM Agreement, it relies exclusively on statements made in the Appellate Body report in *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379). Another panel has rejected this type of approach as insufficient for making a *prima facie* case, and so should this panel.[18]

46. China has made no attempt to apply its own interpretation of the covered agreements to the facts of this dispute, thus, the Panel should not make China's case for it. Aside from the defects in China's approach, the United States would like to take this opportunity to make a few points about the Appellate Body report in DS379 and the U.S. interpretation of Article 19.3 of the SCM Agreement.

47. First, the Panel is not bound by the Appellate Body report in DS379, particularly as the Appellate Body erred in its interpretation of Article 19.3. The interpretation set forth in the U.S first written submission accords with the ordinary meaning of the terms of the SCM Agreement, read in their context, and in light of the object and purpose of the agreement. These arguments were not considered by the Appellate Body as Article 19.3 was not the focus of China's arguments in DS379.

48. Second, with respect to the interpretation of Article 19.3 of the SCM Agreement, the Panel is to undertake its own interpretations of that term by applying the customary rules of interpretation of public international law. Article 19.3 of the SCM Agreement provides, in relevant part, that "[w]hen a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury."

[18] *US-Upland Cotton (Panel)*, paras. 7.959 – 7.986.

49. When that text is analyzed pursuant to customary rules of interpretation, it becomes evident that Article 19.3 of the SCM Agreement is first and foremost a non-discrimination provision to ensure that the amount of countervailing duties levied corresponds to the amount of subsidies identified. As explained in the U.S. first written submission, Article 19.3 is a non-discrimination provision that requires the Member to levy duties (i) on imports from all sources found to be subsidized and causing injury, (ii) on a non-discriminatory basis on imports from those sources, and (iii) "in the appropriate amounts", as understood under SCM Agreement rules, for each source in relation to which a levy is imposed. Because each source of imports may have been subsidized to varying degrees, and CVDs may be no greater than the amount of the subsidy found to exist,[19] "the appropriate amounts" of CVDs that may be levied "in each case" under Article 19.3 are those amounts calculated for and attributable to each source as determined by the administering authority.

50. Third, as noted in the U.S. first written submission, the context provided by the SCM Agreement and its structure support this understanding of Article 19.3. Viewing Article 19 of the SCM Agreement in light of this context, it is evident that Article 19 is concerned with the primarily ministerial function of imposing and collecting CVDs once those duties are calculated and determined in accordance with the obligations imposed by the preceding articles of the SCM Agreement. The binding obligations of Article 19.3 of the SCM Agreement seek to ensure that, after the subsidy amount is calculated, the level of CVDs imposed by an administering authority accurately and objectively reflects the subsidy amounts calculated for each country and each company investigated under SCM Agreement rules. Article 19.3 has nothing to do with demonstrating the existence or actual calculation of a subsidy.

51. Therefore, China's assertion that the "USDOC has failed to ensure that it imposes countervailing duties 'in the appropriate amounts in each case', taking into account the

[19] Article 19.4 of the SCM Agreement.

simultaneous imposition of anti-dumping duties that are likely to offset the same subsidies,"[20] is based on a fundamentally flawed understanding of Article 19.3 of the SCM Agreement.

52. Because China has not alleged that Commerce's imposition or collection of CVDs was discriminatory, or did not correspond to the amount of subsidies identified in any of the 31 challenged sets of determinations at issue in this dispute, China's claim that the United States acted inconsistently with Article 19.3 should be rejected.

53. Lastly, China contends that, because the United States acted inconsistently with Article 19.3 of the SCM Agreement, it has also acted inconsistently with Articles 10 and 32.1 of the SCM Agreement. Because China's claims under Article 19.3 of the SCM Agreement fail, its consequential claims under Articles 10 and 32.1 of the SCM Agreement must also fail.

VI. CONCLUSION

54. As we have demonstrated in our first written submission and again this morning, China has failed to make its case in this dispute, both as a matter of law and a matter of fact. Accordingly, the United States respectfully requests the Panel to reject China's claims.

55. Mr. Chairperson, members of the Panel, this concludes our opening statement. We would be pleased to respond to your questions.

[20] China First Written Submission, para. 126.