

# US – SHRIMP AND SAWBLADES (CHINA)<sup>1</sup>

## (DS422)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	China	ADA Art. 2.4.2	Establishment of Panel	25 October 2011
			Circulation of Panel Report	8 June 2012
Respondent	United States		Circulation of AB Report	NA
			Adoption	23 July 2012

### 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States anti-dumping measures covering two products from China.
- **Product at issue:** (i) certain frozen warmwater shrimp; and (ii) diamond sawblades and parts thereof.

### 2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4.2 (dumping determination – zeroing):** The Panel upheld China's claim that the use of zeroing in calculating the margins of dumping in the anti-dumping investigations at issue was inconsistent with Art. 2.4.2, and therefore concluded that the United States had acted inconsistently with its obligations under this provision.

**ADA Art. 2.4.2 (dumping determination – separate rate calculation):** The Panel rejected China's claim concerning the separate rate in the shrimp investigation. As the investigation concerned imports from a non-market economy, the United States Department of Commerce (USDOC) assigned a "separate rate" to exporters that were able to demonstrate the absence of government control, both *de jure* and *de facto*, over their export activities; other exporters were assigned the rate for the People's Republic of China-entity. In calculating the separate rate, the USDOC had averaged the dumping margins of the investigated companies, which were calculated with zeroing. China argued that the separate rate was also inconsistent with ADA Art. 2.4.2. The Panel considered that China "has not ... satisfactorily explained how Article 2.4.2 could provide the legal basis for a finding of inconsistency with respect to the separate rate" and said that "[t]he fact that margins of dumping are inconsistent with Article 2.4.2 does not necessarily mean that a separate rate calculated on the basis of such margins is also, itself, inconsistent with that same provision". The Panel however agreed with the statement of the panel in *US – Shrimp (Ecuador)* that the calculation of the separate rate on the basis of individual margins calculated with zeroing "necessarily incorporates the WTO-inconsistent zeroing methodology".

### 3. OTHER ISSUES

- **Uncontested claims:** Although the respondent did not contest China's claims, the Panel considered that its responsibilities remained as set forth under DSU Art. 11, i.e. to make "an objective assessment of the matter before it". Further, with respect to the burden of proof, the Panel held that even though the respondent did not contest the claims, China was nevertheless required to make a prima facie case of violation.

<sup>1</sup> *United States – Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China*