

US – ANTI-DUMPING AND COUNTERVAILING DUTIES (CHINA)¹

(DS379)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	China	ASCM Arts. 1.1, 2.1, 2.2, 10, 12, 14, 19.3, 19.4, 32 GATT Art. I, VI:3	Establishment of Panel	20 January 2009
			Circulation of Panel Report	22 October 2010
Respondent	United States		Circulation of AB Report	11 March 2011
			Adoption	25 March 2011

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Countervailing and anti-dumping measures imposed concurrently by the United States against the same products from China, following parallel anti-dumping (AD) and countervailing duty (CVD) investigations by the United States Department of Commerce (USDOC).
- **Product at issue:** Circular welded carbon quality steel pipe (CWP); light-walled rectangular pipe and tube (LWR); laminated woven sacks (LWS); certain new pneumatic off-the-road tyres (OTR).

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **ASCM Art. 1.1(a)(1) (definition of a subsidy – public body):** The Appellate Body reversed the Panel's interpretation of the term "public body" in ASCM Art. 1.1(a)(1) and found that a public body is an entity that possesses, exercises, or is vested with, governmental authority. The Appellate Body completed the analysis and found that the United States had acted inconsistently with ASCM Arts. 1.1(a)(1), 10, and 32.1 in finding that certain State-owned enterprises (SOEs) constituted public bodies. It also found that China did not establish that the USDOC had acted inconsistently with Art. 1.1(a) in determining that certain State-owned commercial banks (SOCBs) constituted public bodies.
- **ASCM Art. 2 (specificity):** The Appellate Body upheld the Panel's finding that China did not establish that the USDOC acted inconsistently with Art. 2.1(a) by determining in the OTR investigation that SOCB lending was *de jure* specific to the OTR industry. The Appellate Body upheld the Panel's interpretation of Art. 2.2 with respect to the USDOC's determination of regional specificity in the LWS investigation.
- **ASCM Art. 14 (calculation of the amount of subsidy – benchmark):** The Appellate Body upheld the Panel's findings that the USDOC did not act inconsistently with Art. 14(d) by rejecting Chinese in-country private prices as benchmarks to determine the benefit conferred by subsidies in the form of the provision of inputs in certain of the investigations at issue. The Appellate Body upheld the Panel's interpretation of Art. 14(b) and upheld the Panel's finding that the USDOC's decision not to rely on interest rates in China as benchmarks for RMB-denominated loans was not inconsistent with this provision. The Appellate Body, however, reversed the Panel's finding that the proxy benchmark used by the USDOC to calculate the benefit from such loans in the CWP, LWS, and OTR investigations was not inconsistent with Art. 14(b).
- **ASCM Arts. 14 (calculation of the amount of subsidy – "offsets"):** The Panel found that China did not establish that the USDOC acted inconsistently with, *inter alia*, Art. 14(d) by not "offsetting" positive benefit amounts with "negative" benefit amounts, either across different kinds of rubber or across different months of the period of investigation, in the OTR investigation. This finding was not appealed.
- **ASCM Arts. 19.3 and 19.4 ("double remedy"):** The Appellate Body agreed with the Panel that double remedies are likely to arise from the simultaneous application, on the same imported products, of anti-dumping duties calculated pursuant to an NME methodology and of countervailing duties. The Appellate Body reversed the Panel's finding that such offsetting of the same subsidization twice is not prohibited under the ASCM. The Appellate Body found, instead, that the imposition of a double remedy is inconsistent with Art. 19.3. On this basis, the Appellate Body found that the United States had acted inconsistently with Art. 19.3 in the four sets of parallel AD and CVD investigations at issue.

¹ *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*

² Other issues addressed: "entrustment or direction"; use of yearly, as opposed to daily, interest rates, in calculating the benefit conferred by loans from SOCBs; "pass-through" of benefits, and methodology to determine the existence and amount of benefit in situations in which SOE-produced inputs are sold through trading companies; use of "facts available"; requirement to provide interested parties at least 30 days to respond to supplemental questionnaires and questionnaires concerning new subsidy allegations; requirement to provide notice of the information which the authorities require and to inform interested Members and parties of the "essential facts under consideration"; MFN treatment in the avoidance of a double remedy with respect to the same situation of subsidization; duty of a panel under DSU Art. 11; terms of reference (correspondence between the request for consultations and panel request, identification of claims in the panel request).