

CHINA – GOES¹

(DS414)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	GATT Art. VI:2 ADA Arts. 1, 3.1, 3.2, 3.5, 6.5.1, 6.8, 6.9, 12.2, 12.2.2, Annex II, ASCM Arts. 10, 11.2, 11.3, 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.5, 22.3, 22.5	Establishment of Panel	25 March 2011
			Circulation of Panel Report	15 June 2012
Circulation of AB Report	18 October 2012			
Adoption	12 November 2012			
Respondent	China			

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** China's imposition of anti-dumping and countervailing duties on grain oriented flat-rolled electrical steel from the United States, pursuant to China's Ministry of Commerce (MOFCOM) Final Determination [2010] No. 21 (10 April 2010).
- **Product at issue:** Grain oriented flat-rolled electrical steel (GOES).

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **ASCM Arts. 11.2 and 11.3 (initiation of investigation – application):** The Panel concluded that the obligation upon Members in relation to the assessment of the sufficiency of evidence in an application finds expression in Art. 11.3 and must be read together with Art. 11.2, which sets forth the requirements for sufficient evidence. The Panel found that MOFCOM initiated countervailing duty investigations into 11 programmes without sufficient evidence to justify it, contrary to Art. 11.3.
- **ADA Art. 6.8 and Annex II para. 1/ASCM Art. 12.7 (evidence – facts available):** The Panel found that MOFCOM improperly resorted to facts available to calculate the “all others” dumping margin and subsidies rate for unknown exporters and improperly used a 100% utilization rate when applying facts available to calculate the subsidy rates for the two known respondents under certain procurement programmes, contrary to ADA Art. 6.8 and Annex II and ASCM Art. 12.7.
- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination) and ADA Art. 3.2/ASCM Art. 15.2 (injury determination – evidence on price effects and volumes):** The Appellate Body interpreted ADA Art. 3.2 and ASCM Art. 15.2 as requiring an investigating authority to consider the relationship between subject imports and prices of like domestic products, so as to understand whether subject imports provide explanatory force for the occurrence of significant price depression or suppression. The Appellate Body upheld the Panel's finding that MOFCOM wrongly relied on the “low price” of subject imports relative to domestic prices in reaching its price effects finding, as the evidence available could not have allowed an objective and impartial investigating authority to determine that subject imports were priced lower than domestic products.
- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination) and ADA Art. 3.5/ASCM Art. 15.5 (injury determination – causation):** The Panel found that MOFCOM failed properly to examine whether the rapid increase in the capacity of the domestic GOES, was at the same time injuring the domestic industry, contrary to ADA Arts. 3.1 and 3.5 and ASCM Arts. 15.1 and 15.5.
- **ADA Art. 6.9/ASCM Art. 12.8 (evidence – essential facts):** The Panel found deficiencies in MOFCOM's essential facts disclosure in connection with the resort of facts available, the price effects analysis and the causation analysis with respect to non-subject imports, contrary to ADA Art. 6.9 and ASCM Art. 12.8. The Appellate Body upheld the finding with respect to price effects.
- **ADA Arts. 12.2 and 12.2.2/ASCM Arts. 22.3 and 22.5 (notification requirements):** The Panel found deficiencies in MOFCOM's public notice and explanations in connection with the resort of facts available, the price effects analysis and the causation analysis with respect to non-subject imports, contrary to ADA Arts. 12.2 and 12.2.2 and ASCM Arts. 22.3 and 22.5. The Appellate Body upheld the finding with respect to price effects. The Panel rejected the United States' claims with respect to public notice of the calculations used to determine the dumping margins and the findings and conclusions leading to the benefit determination under the government procurement statutes.
- **ADA Art. 6.5.1/ASCM Art. 12.4.1 (evidence – confidential information):** The Panel found that MOFCOM failed to require the applicants to furnish non-confidential summaries in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, contrary to ADA Art. 6.5.1 and ASCM Art. 12.4.1.

¹ China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States

² Other issues addressed: ADA Art. 1, ASCM Art.10.

CHINA – GOES (ARTICLE 21.5 – US)¹ (DS414)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	ADA Arts. 3.1, 3.2, 3.4, 3.5, 6.9, 12.2, 12.2.2	Establishment of Panel	26 February 2014
			Circulation of Panel Report	31 July 2015
Respondent	China	ASCM Arts. 15.1, 15.2, 15.4, 15.5, 12.8, 22.3, and 22.5	Circulation of AB Report	N/A
			Adoption	31 August 2015

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Measures taken by China to implement the DSB recommendations and rulings in *China – GOES*, as set forth in MOFCOM's Redetermination issued on 31 July 2013.
- **Product at issue:** Grain oriented flat-rolled electrical steel (GOES).

2. SUMMARY OF KEY PANEL

- **ADA Art.3.1/ASCM Art.15.1 (injury determination – positive evidence and objective examination) and ADA Art.3.4/ASCM Art.15.4 (injury determination – adverse impact):** The Panel found this claim was not properly before it as it pertained to a matter that could have been raised in the original proceedings but was not, and it could not now be raised in compliance proceedings.
- **ADA Art.3.1/ASCM Art.15.1 (injury determination – positive evidence and objective examination) and ADA Art.3.2/ASCM Art.15.2 (injury determination – evidence on price effects):** The Panel found several deficiencies in MOFCOM's price depression and price suppression analyses. In particular, noting that MOFCOM's analyses were based on the effects of the increased volume of subject imports on the domestic like product prices, it found that some aspects of these analyses were based on assumptions rather than evidence. According In particular, the found Panel found that certain relevant evidence on record, such as evidence pertaining to the volume and market share of non-subject imports, and that regarding differences in prices among subject imports, non-subject imports and domestic like products, were not properly considered by MOFCOM.
- **ADA Art.3.1/ASCM Art.15.1 (injury determination – positive evidence and objective examination) and ADA Art.3.5/ASCM Art.15.5 (causation determination):** The Panel found several aspects of MOFCOM's causation determination to be inconsistent with these provisions. The Panel concluded that because MOFCOM's causation determination relied, in part, on its price effects analysis, which the Panel had already found to be inconsistent with the relevant provisions of the ADA and SCM, its causation determination was also erroneous. In addition, the Panel found that MOFCOM had failed to adequately explain why the injury suffered by the domestic industry could not be attributed to certain factors other than dumped imports, including non-subject imports.
- **ADA Art.6.9/ASCM Art.12.8 (evidence – essential facts):** The Panel upheld some claims raised by the United States while rejecting others. In rejecting these claims, the Panel noted that these claims pertained to matters on which it had already concluded that MOFCOM's redetermination was substantively inadequate. However, the Panel found that MOFCOM did disclose the essential facts which formed the basis of this substantially inadequate determination, and therefore did not violate these provisions.
- **ADA Arts. 12.2 and 12.2.2/ASCM Arts. 22.3 and 22.5 (notification requirements):** The Panel found that the claims regarding inadequate public notice related to aspects of MOFCOM's Redetermination on which the Panel had already found a substantive violation. Thus, the Panel exercised judicial economy on these claims.

¹ *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States*