

CHINA – X-RAY EQUIPMENT¹

(DS425)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	European Union	ADA Arts. 3.1, 3.2, 3.4, 3.5, 6.5.1, 6.9 and 12.2.2	Establishment of Panel	20 January 2012
			Circulation of Panel Report	26 February 2013
Respondent	China		Circulation of AB Report	NA
			Adoption	24 April 2013

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping duties imposed by China's Ministry of Commerce (MOFCOM) by Notice No. 1 (2011), including its Annex, on x-ray equipment from the European Union.
- **Product at issue:** X-ray security inspection equipment (x-ray equipment) from the European Union.

2. SUMMARY OF KEY PANEL FINDINGS²

- **ADA Arts. 3.1 (injury determination) and 3.2 (injury determination – volume of imports):** The Panel held that MOFCOM's price undercutting and price suppression analyses were inconsistent with Arts. 3.1 and 3.2. The Panel found that the price effects analysis were not based on an objective examination of positive evidence, as MOFCOM had failed to ensure that the prices it was comparing as part of its price effects analysis were comparable.
- **ADA Arts. 3.1 (injury determination) and 3.4 ((injury determination – injury factors):** The Panel found MOFCOM acted inconsistently with Arts. 3.1 and 3.4 because of its failure to consider all relevant economic factors, in particular, the "magnitude of the margin of dumping" when making a determination on the state of the domestic industry. Moreover, MOFCOM's examination was found to lack objectivity, and not to be reasoned and adequate. The Panel rejected the European Union's claim that MOFCOM did not rely upon positive evidence in making its determination.
- **ADA Arts. 3.1 (injury determination) and 3.5 (injury determination – causation):** The Panel concluded that MOFCOM acted inconsistently with Arts. 3.1 and 3.5 because (i) it failed to take into consideration the differences in the products under consideration in the price effects analysis; and (ii) it failed to provide an adequate explanation regarding how the prices of the dumped imports caused price suppression in the domestic industry, particularly in 2008. Moreover, it found that MOFCOM failed to consider certain "known factors", and failed to consider evidence relating to other factors that it did explicitly consider, in its non-attribution analysis.
- **ADA Art. 6.5.1 (evidence – confidential information):** The Panel upheld the majority of the European Union's claims that the non-confidential summaries provided by the Chinese producer that had filed the request for the imposition of the anti-dumping measures, were contrary to the first sentence of Art. 6.5.1 as they were inadequate to permit a reasonable understanding of the substance of the information submitted in confidence. The European Union's claim that MOFCOM had improperly invoked the Art. 6.5.1 exceptional circumstances mechanism by failing to require the Chinese producer to provide a statement of reasons why the relevant confidential information could not be summarized was also upheld.
- **ADA Art. 6.9 (evidence – essential facts):** The Panel largely upheld the European Union's claim under Art. 6.9 that MOFCOM had failed to disclose certain essential facts to interested parties.
- **ADA Art. 12.2.2 (notification):** The Panel found that MOFCOM's failure to include in its public notice relevant information regarding its price effects analysis and the factual basis for the determination of the residual rate was contrary to the first sentence of Art. 12.2.2. Moreover, MOFCOM's public notice violated the second sentence of Art. 12.2.2 as it failed to explain why it had rejected certain arguments regarding the treatment of domestic sales to affiliated distributors. Other aspects of the European Union's claim under Art. 12.2.2 were not upheld by the Panel.

¹ *China – Definitive Anti-Dumping Duties on X-Ray Equipment from the European Union*

² The Panel exercised judicial economy on whether MOFCOM had acted inconsistently with Art. 3.4 by failing to take into account the differences between high-energy and low-energy scanners, with respect to its analysis of the effect of the volume of subject imports, in respect of the European Union's dependent claims under Arts. 6.2 and 6.4 and in respect of one aspect of the European Union's Art. 6.9 claim.