

CHINA – BROILER PRODUCTS¹

(DS427)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	ADA Arts. 2.2.1.1, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 6.2, 6.5.1, 6.8, 6.9, 12.2, 12.2.2; ASCM Arts. 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.4, 15.5, 16.1, 19.4, 22.3, 22.5; GATT Art. VI:3	Establishment of Panel	20 January 2012
			Circulation of Panel Report	2 August 2013
Respondent	China		Circulation of AB Report	NA
			Adoption	25 September 2013

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Imposition of anti-dumping and countervailing measures by China.
- **Product at issue:** Broiler chicken products from the United States.

2. SUMMARY OF KEY PANEL FINDINGS²

- **ADA Art. 6.2 (defence of parties' interests):** The Panel found that China's Ministry of Commerce (MOFCOM) had failed to provide an opportunity for interested parties with adverse interests to meet and present their views, in violation of Art. 6.2.
- **ADA Art. 6.5.1 and ASCM Art. 12.4.1 (provision of non-confidential summaries):** The Panel found that the non-confidential summaries of the information redacted from the confidential version of the Petition did not provide a reasonable understanding of the information submitted in confidence.
- **ADA Art. 6.9 and ASCM Art. 12.8 (disclosure of essential facts):** The Panel found that MOFCOM had failed to disclose certain essential facts. With respect to calculations of dumping margins, the Panel determined that the actual calculations performed need not be disclosed, however the investigating authority must disclose the formula it used to perform the calculations.
- **ADA Art. 2.2.1.1 (dumping determination – costs calculation):** The Panel found that MOFCOM had improperly rejected the cost allocations in the normal books and records of two of the respondents as it did not explain its reasons for doing so. For one respondent, the Panel concluded that MOFCOM had provided a sufficient explanation of its reasons for rejecting the cost allocations contained in the respondent's normal books and records. The Panel also found that MOFCOM improperly allocated certain costs that were not actually associated with the production and sale of the relevant products.
- **ADA Art. 6.8 and ASCM Art. 12.7 (dumping determination – facts available):** The Panel concluded that MOFCOM's publication of a notice on the internet requesting registration and certain information, and informing of the consequences of not doing so, fulfilled the requirements for resorting to "facts available". However, the Panel concluded that the United States made a prima facie case that the rates applied were in contravention of Arts. 6.8 and 12.7.
- **ASCM Art. 19.4 and GATT Art. VI:3 (calculation of the amount of subsidization):** The Panel found that MOFCOM improperly calculated the amount of per unit subsidization as it did not explain how it ensured that it only countervailed subsidies conferred on the production of subject products.
- **ADA Art. 4.1/ASCM Art. 16.1 and ADA Art. 3.1/ASCM Art. 15.1 (definition of domestic industry):** The Panel found that there is no obligation to first attempt to define the "domestic industry" as the domestic producers as a whole before defining it as producers representing a "major proportion" of total domestic production. The Panel also concluded that the United States had not adduced evidence that MOFCOM's process for defining the domestic industry involved a self-selection process that introduced a material risk of distortion into the injury analysis.
- **ADA Art. 3.1/ASCM Art. 15.1 and ADA Art. 3.2/ASCM Art. 15.2 (injury determination – price effects analysis):** The Panel determined that MOFCOM acted inconsistently with ADA Arts. 3.1/15.1 and 3.2/15.2 when it compared domestic and import prices with a different product mix in its price effects analysis. However, the Panel found that the United States had not demonstrated that MOFCOM had compared prices for transactions at different levels of trade.
- **ADA Arts. 12.2 and 12.2.2 and ASCM Arts. 22.3 and 22.5 (notification requirements):** The Panel found that MOFCOM had failed to disclose "in sufficient detail the findings and conclusions reached on all issues of fact and law considered material" or "all relevant information on matters of fact" in its determinations with respect to the "all others" rate; and failed to explain in its final determinations its reasons for rejecting certain arguments made by US interested parties before MOFCOM.

¹ China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States

² Other issues addressed: judicial economy; consequential claims; DSU Art. 6.2 (panel's terms of reference).

CHINA – BROILER PRODUCTS (ARTICLE 21.5 – US)¹ (DS427)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	ADA Arts. 1, 2.2.1.1, 3.1, 3.2, 3.4, 3.5, 6.1, 6.4, 6.5, 6.8, 6.9, 9.4, 12.2, 12.2.2, Annex II; ASCM Arts. 10, 12.1, 12.3, 12.4, 12.8, 15.1, 15.2, 15.4, 15.5, 22.3, 22.5 GATT Art. VI	Establishment of Panel	22 June 2016
			Circulation of Panel Report	18 January 2018
Respondent	China		Circulation of AB Report	NA
			Adoption	28 February 2018

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- **Measure at issue:** Continued imposition of anti-dumping and countervailing measures by China's Ministry of Commerce (MOFCOM).
- **Product at issue:** Broiler chicken products from the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **ADA Art. 2.2.1.1 (dumping determination – costs calculation):** The Panel found that MOFCOM's redetermination was inconsistent with Art. 2.2.1.1 because it failed to (a) explain why it relied upon a weight-based cost allocation which excluded non-consumable parts of a live broiler (which were intrinsic to its production) and rejected an exporter's alternative weight-based cost allocation which accounted for these non-consumable parts and (b) address the panel's original findings relating to another exporter.
- **ADA Art. 3.2/ASCM Art. 15.2 (injury determination – price effects analysis):** The Panel found that MOFCOM's redetermination was inconsistent with these provisions because it failed to (a) explain or control for differences between baskets of products for the purposes of price comparison; and (b) explain whether the sample of four companies chosen for price comparison was representative. The Panel also held that MOFCOM's consideration of price suppression rested on its consideration of price undercutting, such that its price suppression analysis was undermined by a flawed analysis of price undercutting.
- **ADA Art. 3.4/ASCM Art. 15.4 (injury determination – injury factors):** The Panel found that MOFCOM's redetermination was inconsistent with these provisions because it (a) simply compared capacity utilization rates without explaining or controlling for the increase in total domestic capacity and (b) relied on an irrelevant factor, the prospective impact of future imports, in its examination of present injury caused by subject imports.
- **ADA Art. 3.5/ASCM Art. 15.5 (injury determination – causation):** In respect of MOFCOM's causation analysis, the Panel found that China acted inconsistently with ADA Arts. 3.1 and 3.5 and ASCM Arts 15.1 and 15.5. In its demonstration of a causal link between the subject imports and injury to the domestic industry, MOFCOM relied on a defective consideration of price effects.
- **ADA Art. 6.1/ASCM Art. 12.1 and ADA 6.4/ASCM Art. 12.3 (evidence – notification):** The Panel found that MOFCOM acted inconsistently with these provisions in its reinvestigation by not giving sufficient notice to US interested parties, and not providing timely opportunities to see the questions or requests for information.
- **ADA Art. 6.8 and Annex II(3) (evidence – facts available):** The Panel found that MOFCOM's redetermination was inconsistent with these provisions because it failed to sufficiently explain why it rejected all of one exporter's submitted data and relied on facts available.
- **ADA Art. 6.9 (evidence – essential facts):** The United States failed to establish that MOFCOM's redetermination was inconsistent with these provisions because it did not disclose data from the original investigation and/or the reinvestigation underlying the dumping margins for certain exporters.
- **ADA Art. 9.4(i) (imposition of anti-dumping duties – “all others” rate):** The United States failed to establish that MOFCOM was precluded from determining a “residual” duty rate based on facts available to be applied to “unknown” exporters.

¹ China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States

² Other issues addressed: ADA Art. 1, ASCM Art. 10, GATT Art. VI; ADA Art. 3.1/ASCM Art 15.1; ADA Art. 12.2/12.2.2 and ASCM Art. 22.3/22.5 (judicial economy exercised over these claims); ASCM Art. 12.8 (judicial economy exercised over this claim); ADA Art. 6.5/ASCM Art. 12.4 (outside terms of reference); consequential claims; additional procedures for BCI; terms of reference (DSU Art. 6.2); judicial economy in the original dispute and effect on Article 21.5 proceedings.