

Client Alert

International Trade & Litigation Practice Group

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WTO Panel Upholds The Application Of U.S. Countervailing Duty Law To Imports From China

Today, the World Trade Organization (WTO) released the dispute settlement panel report in the Chinese government's challenge to U.S. countervailing duty (CVD) law: *United States – Countervailing and Anti-Dumping Measures on Certain Products from China* (DS449). The panel report upheld the application of U.S. CVD law to non-market economy countries like China. Today's decision means that the 27 CVD orders imposed by the U.S. Department of Commerce (USDOC) on certain Chinese products pursuant to proceedings conducted between November 2006 and March 2012 will remain in effect.

The report, released today, confirmed that the United States acted consistently with its WTO obligations when it passed Public Law 112-99 (the so-called *GPX legislation*) in March 2012. The *GPX legislation* clarified and confirmed the authority of the USDOC to apply countervailing duties to offset subsidies provided by non-market economy countries, most importantly China. The USDOC has been applying the CVD law to China since 2006. The *GPX legislation* became necessary when a 2011 decision by the Court of Appeals for the Federal Circuit held that the USDOC lacked authority to apply the law to China.

The Chinese government claimed that the *GPX legislation* violated U.S. WTO obligations under Article X of the General Agreement on Tariffs and Trade (GATT) in three ways. First, China claimed that, because the *GPX legislation* was "made effective" on November 6, 2006 (*i.e.*, some 5 1/2 years before the legislation was enacted), it was not published promptly as required by Article X:1 of the GATT. Second, China claimed that the legislation's retroactive enforcement element was inconsistent with the prohibition in Article X:2 of the GATT against the enforcement of a measure "before such measure has been officially published." Finally, China claimed that the *GPX legislation* violated Article X:3(b) because it prevented the prior judicial decision of the Federal Circuit in *GPX Int'l Tire Corp. v. United States* from being "implemented by" and "govern[ing] the practice of" the USDOC. The panel rejected all three claims.

China did prevail on one claim. The panel found that the United States had failed to satisfy its obligation under Article 19.3 of the Agreement on Subsidies and Countervailing Measures because it did not investigate whether a double remedy results when antidumping and countervailing duties are

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applied concurrently in non-market economy cases. This finding was not surprising, given the WTO Appellate Body's findings to the same effect in *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379).

China and the United States have 60 days to appeal the panel's recommendations to the WTO Appellate Body. A decision would be issued by the Appellate Body within 90 days of the initiation of the appeals. Once the decision is adopted by the WTO Dispute Settlement Body, the United States would be required to take actions to comply with any adverse rulings within a "reasonable period of time."

A copy of the panel report can be found at http://www.wto.org/english/tratop_e/dispu_e/449r_e.pdf.

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