

The WTO Panel's Report concerning Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States: Reasoning and Evidence for WT/DS 440

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On June 18, 2014, the WTO's Dispute Settlement Body adopted the Panel report on China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States case. There are questions that are still left open or ambiguous, and some notable findings have been introduced. For the procedure, the major issues are whether the non-confidential summaries of data were sufficient to reasonably understand the information, the admissibility of the delayed letter from parties and whether the notice and registration of Investigation Authorities could justify the facts available for determination of Residual rates. As regards the substantive issues, the discussion focuses on whether there is a self-selection process to distort the domestic industry definition and the price comparability between subject imports and the domestic like product. By analyzing the arguments, evidences and reasoning in these regards, this review points out questions that still need future clarification.

Keywords: China – Autos, Anti-dumping, Non-confidential Summaries, Admissibility of Evidence, Self-selection, Price Comparability

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1. Introduction

On May 23, 2014, the WTO's dispute settlement panel delivered its report on *China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States* (hereinafter *China – Autos*) case.¹ Its main concern covers a series of procedural and substantive aspects of the anti-dumping and countervailing duty measures imposed by China over certain automobiles from the US, as well as their investigations. At its meeting on June 18, 2014, the Dispute Settlement Body (“DSB”) finally adopted the panel report.²

China – Autos is the third “double remedies” case in recent years where the US has challenged China's application of anti-dumping and countervailing duties (the former cases are *China – GOES*³ & *China – Broiler*⁴). In *China – Autos*, most legal arguments were similar or even identical to those in the former two cases. However the Panel made several notable and important legal reasoning and findings.⁵

2. Background

On September 9, 2009, the China Association of Automobile Manufacturers (“CAAM”) filed a petition for imposing anti-dumping and countervailing duties on the US made automobiles with an engine capacity equal to or bigger than 2000 cubic centimeters (“cc”). The Ministry of Commerce of the People's Republic of China (“MOFCOM”) initiated anti-dumping and countervailing duties investigations on November 6, 2009.⁶

MOFCOM made its preliminary and final decisions on April 2⁷ and May 5, 2011,⁸ respectively. According to the final determination, the subject product was dumped and subsidized, causing injury to the domestic industry. Also, MOFCOM Notices Nos. 20 and 84 authorized its domestic authorities to levy anti-dumping and countervailing duties rates effective December 15, 2011, at the rates established in the final determination.⁹ Such rates shall be applied to the cars from General Motors, Chrysler and Ford Motor, as well as US produced BMW, Mercedes-Benz and Honda.¹⁰