

US - Countervailing Measures (China) (Article 21.5 - China)

**UNITED STATES - COUNTERVAILING DUTY
 MEASURES ON CERTAIN PRODUCTS
 FROM CHINA**

Recourse to Article 21.5 of the DSU by China

Report of the Appellate Body

WT/DS437/AB/RW and Add.1

*Adopted by the Dispute Settlement Body
 on 15 August 2019*

United States, *Appellant/Appellee*
 China, *Other Appellant/Appellee*
 Australia, *Third Participant*
 Canada, *Third Participant*
 European Union, *Third Participant*
 Japan, *Third Participant*
 Korea, *Third Participant*
 India, *Third Participant*
 Russia, *Third Participant*
 Viet Nam, *Third Participant*

Appellate Body Division:
 Graham, Presiding Member
 Bhatia, Member
 Servansing, Member

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* The Notices of Appeal and Other Appeal and the executive summaries of written submissions contained in this Addendum are attached as they were received from the participants and third participants. The content has not been revised or edited by the Appellate Body, except that paragraph and footnote numbers that did not start at one in the original may have been re-numbered to do so, and the text may have been formatted in order to adhere to WTO style. The executive summaries do not serve as substitutes for the submissions of the participants and third participants in the Appellate Body's examination of the appeal.

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ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Description
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
CCP	Chinese Communist Party
CVD	countervailing duty
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATT 1994	General Agreement on Tariffs and Trade 1994
GOC	Government of the People's Republic of China
ILC Articles	International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts
OCTG	oil country tubular goods
OECD	Organization for Economic Cooperation and Development
Original Panel Report	Panel Report, <i>United States – Countervailing Duty Measures on Certain Products from China</i> , WT/DS437/R
PRC	People's Republic of China
SCM Agreement	Agreement on Subsidies and Countervailing Measures
Section 129	Section 129 of the Uruguay Round Agreements Act
SIE	state-invested enterprise
SOCB	state-owned commercial bank
SOE	state-owned enterprise
USDOC	United States Department of Commerce
WTO	World Trade Organization

PANEL EXHIBITS CITED IN THIS REPORT*

Exhibit Number	Short Title (if applicable)	Description
CHN-1	Public Bodies Memorandum	USDOC Memorandum dated 18 May 2012 for Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379; and USDOC Memorandum dated 18 May 2012 on the relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be "public bodies" within the context of a countervailing duty investigation
CHN-4	Preliminary Determination on Public Bodies and Input Specificity	USDOC Memorandum dated 25 February 2016 on Preliminary Determination of Public Bodies and Input Specificity, and the attached Memorandum on Input Producers and Input Purchases During the Investigations
CHN-5	Final Section 129 Determination	USDOC Final Determination for Lawn Groomers, Kitchen Shelving, Wire Strand, Print Graphics, Aluminum Extrusions, and Steel Cylinders dated 31 March 2016; Seamless Pipe dated 25 April 2016; Pressure Pipe, Line Pipe, OCTG, and Solar Panels dated 19 May 2016
CHN-19	Ordovery Report	Exhibit GOC-D-25 to GOC Questionnaire response (6 July 2015)
CHN-20	Benchmark Memorandum	Memorandum dated 7 March 2016 on USDOC Benefit (Market Distortion)
CHN-21	Final Benchmark Determination	USDOC Final Determination for Pressure Pipe, Line Pipe, OCTG, Wire Strand, and Solar Panels dated 19 May 2016
CHN-23	Input Specificity Memorandum	USDOC Memorandum dated 31 December 2015, "Input Specificity: Preliminary Analysis of the Diversification of Economic Activities and Length of Time"
CHN-28	USDOC Final Determination in the original Solar Panels investigation	USDOC Issues and Decision Memorandum dated 9 October 2012 on Final Results of the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China

* In this Report, exhibits submitted by the parties to the Panel are referred to using the 3-digit ISO code found in document ISO 3166-1. Thus, exhibits submitted by China are referred to as CHN-# and exhibits submitted by the United States are referred to as USA-#.

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Exhibit Number	Short Title (if applicable)	Description
CHN-43	USDOC Second Administrative Review in Solar Panels	USDOC Issues and Decision Memorandum dated 12 July 2016 on Final Results of the Countervailing Duty Administrative Review (2013) of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China
CHN-53	USDOC Sunset Review in Aluminum Extrusions	USDOC Issues and Decision Memorandum dated 1 August 2016 on Final Results of the First Expedited Sunset Review of the Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China
CHN-67		United States' opening statement before the Appellate Body in <i>US – Carbon Steel (India)</i>
USA-21	Benchmark Questionnaire	USDOC Questionnaire dated 5 June 2015 concerning the Benchmark Used to Measure Whether Certain Inputs Were Sold for Less than Adequate Remuneration
USA-83	Public Bodies Questionnaire	USDOC Questionnaire dated 1 May 2015 concerning "Public Bodies"
USA-84	Supporting Benchmark Memorandum	USDOC Supporting Memorandum dated 7 March 2016 to Preliminary Benefit (Market Distortion) Memorandum
USA-130	Public Bodies Record Memorandum	Memorandum dated 2 November 2015 on Placement of Factual Information on the Record with Respect to Public Bodies

CASES CITED IN THIS REPORT

Short Title	Full Case Title and Citation
<i>Australia – Automotive Leather II</i> (Article 21.5 – US)	Panel Report, <i>Australia – Subsidies Provided to Producers and Exporters of Automotive Leather – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS126/RW and Corr.1, adopted 11 February 2000, DSR 2000:III, p. 1189
<i>Australia – Salmon</i> (Article 21.5 – Canada)	Panel Report, <i>Australia – Measures Affecting Importation of Salmon – Recourse to Article 21.5 of the DSU by Canada</i> , WT/DS18/RW, adopted 20 March 2000, DSR 2000:IV, p. 2031
<i>Brazil – Aircraft</i>	Appellate Body Report, <i>Brazil – Export Financing Programme for Aircraft</i> , WT/DS46/AB/R, adopted 20 August 1999, DSR 1999:III, p. 1161
<i>Canada – Aircraft</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft</i> , WT/DS70/AB/R, adopted 20 August 1999, DSR 1999:III, p. 1377
<i>Canada – Aircraft</i> (Article 21.5 – Brazil)	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU</i> , WT/DS70/AB/RW, adopted 4 August 2000, DSR 2000:IX, p. 4299
<i>EC – Bed Linen</i> (Article 21.5 – India)	Appellate Body Report, <i>European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India</i> , WT/DS141/AB/RW, adopted 24 April 2003, DSR 2003:III, p. 965
<i>EC – Fasteners (China)</i> (Article 21.5 – China)	Appellate Body Report, <i>European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China – Recourse to Article 21.5 of the DSU by China</i> , WT/DS397/AB/RW and Add.1, adopted 12 February 2016, DSR 2016:1, p. 7
<i>EC and certain member States – Large Civil Aircraft</i>	Appellate Body Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/AB/R, adopted 1 June 2011, DSR 2011:I, p. 7
<i>Japan – DRAMS (Korea)</i>	Appellate Body Report, <i>Japan – Countervailing Duties on Dynamic Random Access Memories from Korea</i> , WT/DS336/AB/R and Corr.1, adopted 17 December 2007, DSR 2007:VII, p. 2703
<i>Mexico – Anti-Dumping Measures on Rice</i>	Appellate Body Report, <i>Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice</i> , WT/DS295/AB/R, adopted 20 December 2005, DSR 2005:XXII, p. 10853
<i>Peru – Agricultural Products</i>	Appellate Body Report, <i>Peru – Additional Duty on Imports of Certain Agricultural Products</i> , WT/DS457/AB/R and Add.1, adopted 31 July 2015, DSR 2015:VI, p. 3403
<i>US – Anti-Dumping and Countervailing Duties (China)</i>	Appellate Body Report, <i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i> , WT/DS379/AB/R, adopted 25 March 2011, DSR 2011:V, p. 2869

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Short Title	Full Case Title and Citation
<i>US – Anti-Dumping and Countervailing Duties (China)</i>	Panel Report, <i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i> , WT/DS379/R, adopted 25 March 2011, as modified by Appellate Body Report WT/DS379/AB/R, DSR 2011:VI, p. 3143
<i>US – Anti-Dumping Methodologies (China)</i>	Appellate Body Report, <i>United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China</i> , WT/DS471/AB/R and Add.1, adopted 22 May 2017, DSR 2017:III, p. 1423
<i>US – Carbon Steel (India)</i>	Appellate Body Report, <i>United States – Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India</i> , WT/DS436/AB/R, adopted 19 December 2014, DSR 2014:V, p. 1727
<i>US – Carbon Steel (India)</i>	Panel Report, <i>United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India</i> , WT/DS436/R and Add.1, adopted 19 December 2014, as modified by Appellate Body Report WT/DS436/AB/R, DSR 2014:VI, p. 2189
<i>US – Continued Zeroing</i>	Appellate Body Report, <i>United States – Continued Existence and Application of Zeroing Methodology</i> , WT/DS350/AB/R, adopted 19 February 2009, DSR 2009:III, p. 1291
<i>US – Corrosion-Resistant Steel Sunset Review</i>	Appellate Body Report, <i>United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan</i> , WT/DS244/AB/R, adopted 9 January 2004, DSR 2004:I, p. 3
<i>US – Countervailing Duty Investigation on DRAMS</i>	Appellate Body Report, <i>United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea</i> , WT/DS296/AB/R, adopted 20 July 2005, DSR 2005:XVI, p. 8131
<i>US – Countervailing Measures (China)</i>	Appellate Body Report, <i>United States – Countervailing Duty Measures on Certain Products from China</i> , WT/DS437/AB/R, adopted 16 January 2015
<i>US – Countervailing Measures (China)</i>	Panel Report, <i>United States – Countervailing Duty Measures on Certain Products from China</i> , WT/DS437/R and Add.1, adopted 16 January 2015, as modified by Appellate Body Report WT/DS437/AB/R
<i>US – Countervailing Measures (China) (Article 21.5 – China)</i>	Panel Report, <i>United States – Countervailing Duty Measures on Certain Products from China – Recourse to Article 21.5 of the DSU by China</i> , WT/DS437/RW and Add.1, circulated to WTO Members 21 March 2018
<i>US – Export Restraints</i>	Panel Report, <i>United States – Measures Treating Exports Restraints as Subsidies</i> , WT/DS194/R and Corr.2, adopted 23 August 2001, DSR 2001:XI, p. 5767
<i>US – FSC (Article 21.5 – EC II)</i>	Appellate Body Report, <i>United States – Tax Treatment for "Foreign Sales Corporations" – Second Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS108/AB/RW2, adopted 14 March 2006, DSR 2006:XI, p. 4721
<i>US – Lamb</i>	Appellate Body Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001, DSR 2001:IX, p. 4051