

***CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON
BROILER PRODUCTS FROM THE UNITED STATES:
RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES
(DS427)***

**CLOSING ORAL STATEMENT OF THE UNITED STATES OF AMERICA
AT THE SUBSTANTIVE MEETING OF THE PANEL**

April 26, 2017

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| <i>US – Softwood Lumber VI (Article 21.5 – Canada) (AB)</i> | Appellate Body Report, <i>United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada</i> , WT/DS277/AB/RW, adopted 9 May 2006 |

I. INTRODUCTION

Mr. Chairman, members of the Panel, members of the Secretariat staff:

1. On behalf of the United States, I would like to repeat our thanks to you for your efforts and kind attention during this meeting. We hope that our interventions will be helpful to you as you continue your work in this important dispute.

2. We want to close our presentation by addressing two of the broader themes that have emerged from our discussions over the last two days.

II. CHINA’S ARGUMENTS FIND NO SUPPORT IN MOFCOM’S REDETERMINATION

3. First, China continues to rely on arguments that lack any support in MOFCOM’s redetermination. Three examples from this meeting are representative of the problem.

4. One, the Panel asked China to clarify where in the redetermination did MOFCOM find products such as blood and feathers are waste for the purposes of calculating its cost of production. China asserts that the relevant U.S. producer is in the business of producing edible products and that it can be inferred that such products can be deemed waste for the producer – and because they are waste, MOFCOM did not need to assign costs. That reasoning is flawed, and the United States disagrees with it. But more importantly for the purpose of this dispute, the relevant section of the redetermination concerning why MOFCOM refused to allocate costs across all products do not reflect any such rationales.¹

5. Two, China has invoked purportedly common knowledge about MOFCOM’s reading room that would have led interested parties to have constructive understanding of the documents that were stored there. For example, China notes that interested parties would know to check MOFCOM’s website to learn what documents were in the reading room. While our submissions explain why that position is problematic, our discussions today also provide a vivid example. With respect to the issue of Keystone’s calculation, China is invoking a document that was purportedly deposited in the reading room on May 29, 2014. Exhibit CHN-14, China’s screenshot of what is supposedly in the reading room, the online list, does *not* reference this document.

6. Three, in China’s opening statement yesterday, China did not direct the Panel to any reasoning in MOFCOM’s redetermination that justifies its findings. Instead, China points you to extraneous materials that are simply nowhere to be found on the record. For example, China highlights an exhibit it submitted in the original proceedings to justify MOFCOM’s price effects findings, specifically the relative values of breasts and paws.² We are puzzled by the very

¹ Exhibit USA-9, pp. 36-39.

² China, Opening Oral Statement, para. 47, citing Exhibit CHN-29 in the original proceeding.

content of that exhibit – an article about why Chinese consumers are not partial to kung pao chicken. But the relevant issue for this dispute is that MOFCOM did not assess the document in the course of the redetermination.

7. The task of this Panel, like any other assessing an antidumping or countervailing duty determination, is to examine whether the investigating authority’s findings are “reasoned and adequate.”³ When China cannot point to any such explanation, the only conclusion is that MOFCOM failed to abide by its WTO obligations.

III. China Chose Not To Implement the Panel’s Findings

8. Finally, I want to note the reason why we are here: because China failed to comply with the DSB recommendations in this dispute. As evidenced by our communications during the reinvestigation, we would have preferred that MOFCOM conducted a fair and transparent investigation so this matter could have been resolved without further recourse to dispute settlement.⁴ But China did not do that – and our discussions confirm that.

9. Three aspects of MOFCOM’s redetermination are telling in this regard. One, in the injury analysis, MOFCOM has not pointed you to any language that was developed since the Panel Report that reflects additional consideration of any of the pertinent injury issues.

10. Two, with respect to the disclosure of calculations and underlying data, we are struggling to figure out the factual circumstances that China asserts justify MOFCOM’s actions. But why did MOFCOM engage in such a tortured process anyway? An objective investigating authority could have resolved this issue quite simply -- providing the calculations at the outset of the reinvestigation, and then providing another set towards the end of the proceeding if it revised the margins.

11. Third, there is no logical reason why an investigating authority would fail to share the methodology it is utilizing to resolve a flawed analysis in both injury and dumping. If it were serious about addressing concerns, you would expect it to be transparent so it can ensure that interested parties are confident about its judgment and that it had given them an opportunity to present all their views and concerns. MOFCOM inexplicably did not do that.

IV. CONCLUSION

12. This concludes our remarks. We thank the Panel and the Secretariat for your time and attention.

³ *US – Softwood Lumber VI (Article 21.5 – Canada)*, para. 93.

⁴ Exhibit USA-2.