

***CHINA – MEASURES AFFECTING IMPORTS OF AUTOMOBILE PARTS***

**(WT/DS340)**

**EXECUTIVE SUMMARY OF THE OPENING STATEMENT  
OF THE UNITED STATES OF AMERICA  
AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL**

**July 23, 2007**

1. China’s rebuttal submission, though lengthy, adds very little to the substantive discussion of the issues in this dispute. Rather, China’s submission mostly relies on rhetorical devices. First, China relies on rhetorical catch-phrases – such as “substance over form” and the “parts versus wholes.” These phrases are nowhere contained in the WTO Agreement, or even in the Harmonized System, and are not helpful in resolving the issues in dispute. The second rhetorical device used in China’s rebuttal submission is to mischaracterize complainants’ positions. Most notably, China repeatedly claims that the complainants’ agree with China on various issues and the issues thus have been “narrowed,” and then China proceeds to build arguments based on these false premises.

### **Article III and TRIMs**

2. As the United States has explained, China’s measures amount to straightforward inconsistencies with China’s national treatment obligations under Article III of GATT 1994 and to a domestic content requirement that is inconsistent with China’s obligations under Article 2.1 and Paragraph 1(a) of Annex 1 of the TRIMs Agreement. China’s defense to the Article III issues is based solely on its argument that its measures involve customs duties, and that Article III cannot apply to a measure that involves customs duties. China has not otherwise even attempted to assert a defense – aside from a vague reliance on Article XX(d) – to these breaches of its WTO obligations.

3. In its rebuttal submission, China phrases its argument as follows, with the emphasis in the original: “If a particular measure implements and collects a charge that a Member is *allowed* to impose in accordance with Article II, it cannot be the case that the same charge must be in conformity with the requirements of Article III.” This statement has no basis in logic or the text of the GATT 1994. In fact, it is routine for a measure to be examined under the obligations set out under various provisions of the WTO Agreement in disputes under the DSU. The fact that a measure is or is not consistent with one obligation does not necessarily determine whether the measure is or is not consistent with a different obligation.

4. Perhaps China implies that there is something special in GATT Article II that somehow “allows” (as China puts it) Members to depart from other GATT obligations. But that issue has been considered, and rejected, by prior panels under the GATT 1947 and by the Appellate Body under the GATT 1994. As found in those disputes, GATT Article II and a Member’s schedule of tariff commitments impose additional obligations on a Member, and consistency with those obligations cannot serve as a defense to breaches of other WTO obligations.

5. China’s charges (whether internal charges or customs duties) are straightforward violations of Articles III:4 and III:5 of the GATT 1994, as well as the TRIMs agreement. This is because the level of China’s charges increases if the local content of a vehicle manufactured in China exceeds certain thresholds. As such, the measures provide less favorable treatment to imported parts with respect to laws affecting their internal sale, purchase, distribution and use under Article III:4, and impose a domestic mixing requirement within the meaning of Article III:5.

6. Consider a vehicle manufacturer in China that has imported an auto part; call it Part A. Under China’s measures, the importer/manufacturer must post a security for the 10 percent parts rate. Once Part A enters into inventory, the manufacturer has a decision with regard to what to do with this imported part. The manufacturer may decide to use the imported part in the production of a particular complete vehicle. However, the manufacturer must always be mindful of China’s local content thresholds. If the use of Part A in manufacturing would result in a vehicle that exceeds the thresholds, then all other imported parts used in that vehicle would be subject to the 25 percent charge. By tying the use of Part A to increased charges on other parts, China’s measures serve as a disincentive on the use of Part A in manufacturing. And, this disincentive is in addition to, and separate from, the level of the charge imposed on Part A itself. No comparable regulations affect the use of a comparable domestic Part A. Accordingly, China’s measures are a violation of Article III, as a law affecting the use within China of an imported product.

7. China is wrong in asserting that customs duties would always constitute “a violation of the non-discrimination principles under Article III.” The same type of discrimination does not apply to customs duties regularly imposed by WTO Members. That is, the level of charges on other imported products does not depend on how an imported part is used within the Member’s territory.

8. This discrimination not only applies to the “use” of the imported product, but also applies to the “internal sale, offering for sale, purchase, or distribution” under Article III:4. If the importer in the above example were instead a parts distributor or a parts producer, then the importer would want to sell or distribute imported Part A to manufacturers within China. Under China’s measures, however, a manufacturer in China will have a disincentive to purchase imported Part A from the distributor. Thus China’s measures adversely affect the “internal sale, offering for sale, purchase, or distribution” of imported parts, with no comparable effect on domestic parts.

### **Internal Charges vs. Customs Duties**

9. The additional charges at issue in this dispute are internal charges, not “ordinary customs duties.” Under *EEC – Parts and Components*, charges are internal charges subject to Article III:2 of the GATT when based on the product as manufactured internally, regardless of the label adopted by the implementing Member. In this case, China’s charges are based not on the goods as entered but instead on the use of the goods in manufacturing a vehicle within the territory of China. When a part is presented at the border, China imposes a revenue bond based on the 10 percent duty rate for parts, and applies the extra 15 percent charge only (1) if the imported part is actually used in the manufacture of a vehicle, and (2) if the amount of imported content in that vehicle exceeds the thresholds set out in China’s measures. China’s measures are focused on the amount of local content in the final assembled vehicle - the who, what, where, and hows of importation are irrelevant.

10. In its second submission, China argues that its charges are just like regular customs duties because: “The classification of the import entry, and the assessment of the applicable duty rate, is

based on the status of the auto parts and components when they were entered and declared to the Customs General Administration.” This statement, however, is inconsistent with the actual content of China’s measures. The charge is based on how the part is actually used internally, and not on the condition of the part as imported.

11. As the United States understands it, China’s argues in its rebuttal submission that no parts are actually “imported” until the final duties are assessed after manufacturing, because as a formal matter China (in most but not all cases) will not have settled – until after the final manufacture of a complete vehicle – the financial guarantee required upon entry. This argument is not and cannot be correct. Otherwise, a Member could avoid its Article III disciplines by the simple ruse of structuring its customs laws so that no product is actually “imported” – as China proposes the term be interpreted – until after discriminatory internal charges and other discriminatory measures had been applied. Rather, the only sensible way to view “imported” in this context is with its normal meaning, that is, the time when the product enters the Member’s customs territory.

12. The United States also would note that if the Panel in fact were to agree with China’s apparent argument that no parts are to be considered “imported” until after manufacturing, then the measures would amount to import restrictions under Article XI of the GATT 1994, as alleged in the U.S. request for the establishment of a panel. This result would follow from the fact that China’s measures are mandatory for vehicle manufacturers who wish to import parts. And, if those measures prohibit the importation of parts until after the completion of a manufacturing operation, the measures would amount to restrictions on the ability of manufacturers to import parts.

### **GIR 2(a) Would Not Provide China With a Defense under GATT Article II**

13. China’s additional charges on imported auto parts are internal charges, subject to obligations under Article III:2 of the GATT 1994, and not “ordinary customs duties” under GATT Article II:1(a). Even aside from this fact, GIR 2(a) of the Harmonized System would not provide a defense to a breach by China of its tariff commitments.

14. As the United States has explained, China’s tariff classification argument based on GIR 2(a) is entirely without merit. The U.S. explanation includes that China’s interpretation of GIR 2(a) is inconsistent with the object and purpose of the Harmonized System Convention to establish uniform tariff nomenclature rules for the purpose of comparing trade statistics (between exports and imports, and between different parties to the Convention). In fact, under China’s interpretation, the comparability of trade statistics collected by different members, and between import and export statistics, would be destroyed. China has never responded to this explanation of how China’s interpretation is inconsistent with the object and purpose of the HS Convention.

15. China’s argument that only China’s interpretation would allow “substance” to triumph over “form” is meaningless, and completely ignores the reality of modern automobile manufacturing. Manufacturers import bulk shipments of parts because this is the usual and most

efficient means of conducting large-scale automobile manufacturing, and not because manufacturers are trying to avoid duties owed on the import of knock-down kits.

16. The United States also has three additional points on China’s tariff binding argument based on GIR 2(a). First, China’s submission repeatedly claims that GIR 2(a) is addressed to the issue of “parts vs. wholes.” This characterization of GIR 2(a) is incorrect. Rather, the HS addresses “parts vs. wholes” under the HS tariff nomenclature: that is, whole articles and parts (and assemblies) of articles are classified in separate headings. Accordingly, the general issue of “parts vs. wholes” is governed by GIR 1, which provides that articles must be classified in accordance with the relative headings. In contrast, GIR 2(a) is only addressed to the limited issue of the classification of articles presented unassembled or disassembled, and does not address the classification of bulk parts shipments.

17. Second, the United States recognizes that the WCO Secretariat has no formal role under the Convention to provide definitive interpretations of the HS, nor to provide definitive advice to other bodies. The United States does note, however, that the response of the WCO Secretariat to the Panel’s questions acknowledges the point made by the United States regarding the phrase “elements originating in or arriving from different countries,” as used in the HSC decision cited by China. In particular, the committee’s discussion of “elements” from different countries was in the context of discussing the application of rules of origin, and does not in any way indicate that the committee was considering a measure (such as China’s) that would artificially combine bulk shipments of parts from different countries in order to create a fictional collection of parts to be used in the assembly of a complete vehicle.

18. Third, the only pertinence of the HS Convention in this dispute is to assist in determining the common intent of WTO Members with respect to China’s tariff commitment on specific auto parts, such as radiators and brakes. Regardless of any issues raised by China regarding the precise meaning of HS interpretive notes and WCO discussions of interpretive notes, nothing in the HS Convention could support an interpretation of China’s WTO tariff commitments such that bulk shipments of brakes and radiators should receive the same tariff treatment as whole automobiles.

### **China’s Article XX(d) Defense**

19. China, as the disputing party asserting an affirmative defense under Article XX(d), has the burden of proving each element of the defense. China has not met that burden.

20. China’s basic argument under Article XX(d) is that its measures are “necessary to secure compliance with laws or regulations” needed to collect the 25 percent duty that China is permitted under its tariff bindings to collect on the importation of whole vehicles. China uses this language to mean two very different things – neither one of them supports an Article XX(d) defense.

21. First, China uses this language to mean that under its domestic tariff schedule, China is to charge a whole-vehicle rate of duty on any imported part, so long as that part is used to manufacture within China a vehicle with a foreign content that exceeds the thresholds under

China's measures. As the United States has explained, there is no possible interpretation of China's national treatment obligations under Article III, nor of China's WTO Schedule, that would allow for China to impose a 25 percent duty on bulk shipments of parts imported for manufacturing purposes. Accordingly, China's purported Article XX(d) defense fails to present any "laws or regulations which are not inconsistent with the provisions of this Agreement," as required by Article XX(d).

22. Second, China uses the same language – about ensuring its ability to collect the 25 percent whole-vehicle duty – to mean something entirely different: namely, that China must be able to address certain limited, though still hypothetical, examples of "evasion" (as China puts it), such as the case of a CKD split into two shipments, or a whole vehicle entered with the tires removed. To be absolutely clear, the United States does not agree, as China claims, that a hypothetical measure intended to address split shipments of kits would be consistent with China's WTO obligations. Rather, China in fact has not adopted any such measures in this dispute, and it is not meaningful for the United States (nor the Panel) to engage in an analysis of hypothetical, vaguely defined measures not actually adopted by China.

23. For two reasons, China's asserted rationale fails to meet the requirement of necessity under Article XX(d). First, China has still failed to show a single instance where any importer ever engaged in the specific practices identified by China. In fact, China's course of conduct has shown that it has not been concerned about tariff evasion at all. Rather, Chinese authorities have controlled the tariff process by requiring auto manufacturers to negotiate the rates that would be applicable for all types of kits and parts, with the key factors in the outcome of that negotiation being a manufacturer's commitment to investing in China and using local content in assembling vehicles.

24. Second, China's asserted "circumvention" rationale does not match the scope of China's measures. China's measures sweep broadly to cover all imports of bulk parts for manufacturing purposes, not just instances of what China calls "tariff evasion." Given the far broader scope of the measures China has actually adopted, they cannot be considered "necessary" under Article XX(d) to meet China's asserted policy concern with "evasion."