

WTO Panel Rules that U.S. Section 301 Tariffs on Imports from China are WTO-Inconsistent

On 15 September 2020, the **report** of the World Trade Organization (**WTO**) Panel in *United States – Tariff Measures on Certain Goods from China* (DS543) was released. This dispute concerned China’s challenge of US “Section 301” tariff measures that impose additional *ad valorem* customs duties on certain products imported into the United States from China. This was the first WTO ruling related to the current US administration’s practice of applying additional import tariffs to further US trade policy objectives.

The tariff measures at issue were implemented in June and September 2018, further to an investigation conducted by the United States Trade Representative (USTR) under Section 301 of the Trade Act of 1974 (see **USTR, China–Section 301**) which concluded that China’s acts, policies, and practices related to technology transfer, intellectual property, and innovation amounted to “state-sanctioned theft and misappropriation of U.S. technology, intellectual property, and commercial secrets”.

China claimed that these measures, which impose additional customs duties at a rate of 25 percent on certain products, are inconsistent with the United States’ obligations under Articles I:1 and II:1(a) and (b) of the **General Agreement on Tariffs and Trade 1994** (GATT 1994). In response, the United States asserted that any inconsistency was justified as necessary to protect US public morals pursuant to Article XX(a) of the GATT 1994. The United States argued that the Section 301 tariff measures were adopted to “‘obtain the elimination’ of conduct that violates U.S. standards of rights and wrong, namely China’s unfair trade acts, policies, and practices”.

The Panel ruled that the Section 301 tariffs are inconsistent with the United States’ GATT 1994 obligations and that this inconsistency was not justified under the general exception in Article XX(a) for “measures necessary to protect public morals”.

The Panel acknowledged that the public morals objective invoked by the United States in its Article XX(a) defence “reflects societal interests and values that appear to be highly important in the United States”. However, the Panel considered that the United States had not provided an explanation demonstrating how the section 301 tariff measures contribute to this objective. More specifically, the Panel found that the United States had failed to demonstrate that a genuine relationship of ends and means exists between the section 301 tariff measures and the public morals objective pursued by the United States. On this basis, the Panel concluded that the measures could not be provisionally justified as necessary to protect US public morals under subparagraph (a) of Article XX. Having arrived at this conclusion, the Panel determined that it would not be necessary to further consider whether

the measures satisfy the requirements of the *chapeau* of Article XX (i.e., whether they are being applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade).

In rare “concluding comments” after the rulings and recommendations, the Panel explained that, although it was “very much aware of the wider context in which the WTO system currently operates, which is one reflecting a range of unprecedented global trade tensions”, the Panel’s role was not to draw any legal conclusions or make recommendations on any matters other than those it had been specifically tasked to deal with in this dispute. The Panel emphasized that it had “sought to perform diligently its adjudicatory role” in relation to the matters falling within its terms of reference and expressed encouragement to the United States and China to “pursue further efforts to achieve a mutually satisfactory solution” (i.e., a negotiated settlement).

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