

Wiley Rein Commends Important U.S. Victory at the World Trade Organization, Which Strikes Down Chinese Trade Case Retaliation Against U.S. Chicken Products Industry

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Wiley Rein's International Trade Practice commended an August 2 report from the World Trade Organization's (WTO) dispute settlement panel, which condemned several practices by the Chinese government in its antidumping (AD) and countervailing duty (CVD) investigations of U.S. chicken "broiler products." The WTO report sets an important precedent, as China's trade case had been viewed by many as retaliation against the United States for trade cases filed against Chinese producers.

"The ruling makes clear that Chinese retaliation against U.S. industries will not be tolerated," said Wiley Rein partner Timothy C. Brightbill, who has represented U.S. manufacturers in challenging the trade practices of Chinese competitors. "While China is free to file trade cases against other countries, it must follow the basic rules set forth by international law when doing so. In addition, this ruling makes clear that China needs to conduct its trade cases in a far more open, transparent, and fair manner than it currently does."

The Chinese investigation was widely viewed as a response to the U.S. investigation of—and tariffs placed upon—Chinese tires, as the case was announced immediately after President Obama imposed duties on Chinese imports. Others simply include it within a broader U.S.-China "trade war" that has involved disputes about wind towers, steel wheels, solar panels, copper pipes, and currency manipulation. Regardless, the panel report found that multiple substantive and procedural practices of the Chinese authorities violated China's WTO

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obligations.

China's procedural practices violated some basic guarantees protected by international agreements. The violations included denying a hearing request to allow parties to present opposing views, failing to require the Chinese industry to provide public summaries of confidential filings, failing to disclose essential facts necessary to calculate the margins, and rejecting certain arguments without providing any reasons or justification.

China's substantive violations were equally serious. They included allocating costs of non-exported products to the products on which China was calculating a margin, using its own methodology to reallocate the costs of U.S. producers which did not reflect production or sale costs, allocating subsidies received for all chicken products only to the products in question, assigning subsidy rates to companies in excess of the calculated rates, and relying on flawed price comparisons in its injury determination.

After the victory, U.S. Trade Representative (USTR) Michael Froman said, "WTO Members must use trade remedies strictly in accordance with their commitments, and we hope that this win will discourage further violations that hurt American exporters."

This complaint affected a large amount of U.S. trade with China, as the United States exported more than 600,000 metric tons of broiler products in 2009, a category that covers most chicken products except for live, cooked, and canned chicken. Exports decreased by 80 percent after China found AD rates of 50-105% on September 26, 2010 and CVD rates of 4-30% on August 30, 2010.

Wiley Rein's victories on behalf of U.S. manufacturers include persuading U.S. regulators last year to impose antidumping and countervailing duties on Chinese solar producers. The firm has also successfully represented U.S. producers of steel and steel-containing products, wind towers, and lined paper products in trade disputes with China.

The WTO report can be found [here](#). The USTR news release can be found [here](#).