

***CHINA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS
FROM THE UNITED STATES***

(DS558)

**U.S. Responses to Questions from the Panel to the Parties
Prior to the Second Substantive Meeting**

December 4, 2020

1 MEASURE AT ISSUE

1.1 To the United States

68. In its response to Panel question No. 17, China argues as follows:

The “other additional duties” are not part of or related to China's measures at issue in the present dispute, and “other additional duties” do not constitute amendments [or] adjustments to China's measures at issue.

...

The temporal sequence of China's measure at issue and then the “other additional duties” also suggest that in the Panel's assessment of the consistency of China's measures at issue with the Articles II:1(a) and II:1(b) of the GATT 1994, the Panel does not need to and should not consider the “other additional duties” in addition to the additional duties by China's measures at issue, because if only when the “other additional duties” added on top of the additional duties by China's measures at issue would the applicable rate exceeds China's bound rate, this would mean the excess over the bound rate is not due to [C]hina's measures at issue, but due to the “other additional duties”. This would mean China's measures at issue did not lead to the breach of the bound tariff obligations. For this reason, it is also inappropriate for the United States to include the “other additional duties” in its analysis and argument and the Panel should not consider the “other additional duties”.

Please comment, addressing in particular China's argument concerning the relationship between China's various duties and the alleged violations of Article II of the GATT 1994.

Response:

1. As is clear on the face of the U.S. panel request, the United States is not seeking findings and recommendations as to the other additional duties referenced above.¹ Rather, the matter before the Panel is whether the additional duty measure identified in the U.S. panel request breaches China's obligations under Article II of the GATT 1994 with respect to 123 of the 128 tariff codes at issue in this dispute, and China's obligations under Article I of the GATT 1994 with respect to all of those 128 tariff codes.² Rather, the existence of the other additional duty

¹ See Request for the Establishment of a Panel by the United States, WT/DS558/2, page 1 (listing legal instruments at issue).

² See U.S. Responses to Questions After First Substantive Meeting, paras. 21-22, Exhibits USA-17 and USA-18.

measures are relevant *facts* that support the U.S. claim that the additional duty measure at issue in this dispute is inconsistent with China’s obligations under the GATT 1994.

2. China’s response to Panel Question 17 regarding 5 particular tariff codes³ goes beyond its initial argument concerning the Panel’s terms of reference and the U.S. panel request to argue that China’s cumulative duty increases on U.S.-originating products, when in excess of its bound rate, is “not due to [C]hina’s measures at issue, but due to the ‘other additional duties’ [such that] China’s measures at issue did not lead to the breach of the bound tariff obligations.” China’s argument has no legal merit. A WTO Member’s cumulative assessment of duties, even if taken pursuant to separate measures, breaches obligations under Article II of the GATT 1994 whenever viewed in combination with the Member’s MFN rate and (if applicable) other additional duties the total rate of duty exceeds its tariff bindings. In such a case, a Member may not argue that the MFN rate plus (if applicable) other individual duty increases, when viewed in isolation, do not exceed the bound rate. If this were the case, Members could avoid tariff concessions simply by imposing duties through separate measures.

3. In sum, the United States has established through evidence and argument that the additional duties at issue in this dispute, when combined with China’s MFN duties and other additional duties that China applied starting July 6, 2018, result in sums of duties that exceed the bound rates for the tariff codes at issue, and thus that the additional duty measure at issue in this dispute is inconsistent with Article II of the GATT 1994.

³ See U.S. Responses to Questions After First Substantive Meeting, para. 22.