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**INTERNATIONAL TRADE &  
CUSTOMS UPDATE**

**WTO Requires United States to Avoid Double Remedies in AD and CVD Cases Against China**

On March 11, 2011, the Appellate Body of the World Trade Organization (WTO) found that the simultaneous imposition by the United States of countervailing (CVD) and antidumping (AD) duties on imports from China, which the United States treats as a non-market economy, breached U.S. obligations under the WTO Agreement on Subsidies and Countervailing Measures (ASCM). The Appellate Body's decision reverses the decision of a lower panel and echoes an earlier decision of the U.S. Court of International Trade, which raised questions regarding the U.S. practice.

The Appellate Body reviewed U.S. AD and CVD investigations on four products from China: circular welded pipe, light-walled rectangular pipe and tube, pneumatic off-road tires and laminated woven sacks. In each case, the U.S. Department of Commerce determined the products were both subsidized by the government of China and sold below normal value. The U.S. International Trade Commission found that U.S. domestic industries were injured or threatened with injury as a result of the dumped and subsidized imports. Consequently, the Commerce Department imposed AD and CVD orders on imports of each of the products.

The Appellate Body disagreed with the finding of the WTO panel that the U.S. measures did not violate WTO provisions. In reversing the panel, the Appellate Body referenced Article 19.3 of the ASCM, which requires WTO members to levy CVD duties "in the appropriate amounts in each case." The Appellate Body found that this obligation prohibits members from imposing "double remedies." To comply with Article 19.3, a member wishing to apply AD and CVD duties concurrently on the same imports from a non-market economy must evaluate whether AD margins are influenced by government subsidies and, if so, must reduce any related CVD duties accordingly. The Appellate Body explained that the failure to employ this methodology would lead to double remedies in instances when subsidies are actually the cause of the dumping and yet duties are levied as if the two occurrences are unrelated.

The Appellate Body's decision also is important because it clarifies a fundamental aspect of WTO rules on subsidies – what constitutes a "public body" under Article 1.1(a)(1) of the ASCM. The Appellate Body reversed the panel's determination that companies in which the state is the majority shareholder – state-owned enterprises – are "state bodies" simply because the government maintains majority ownership. The Appellate Body defined "public body" as an entity vested or entrusted with the authority to perform a government function. This means that majority ownership alone does not establish that an entity is a public body.

Companies that import goods or compete with imported goods should note that AD and CVD remedies each remain available under U.S. law (and WTO rules) following the Appellate Body's

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decision. The decision is important but targets only double remedies; it does not eliminate any remedy currently available to U.S. companies.

#### **FOR MORE INFORMATION**

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