

Synthesis of China Trade Cases

(March 2019)

Dr. Stuart S. Malawer

Case 1 (Rare Earths) (AB 2014). Involved similar export restrictions as in Raw Materials. Defense under Gatt Article XX (protection of environment) not sustained. Case 5 (Export of Raw Materials)(AB 2012) dealt with export restrictions under GATT Article XI. Precursor of holding against China in the case concerning rare earth minerals.

Case 2 (China Tires) (AB 2014). Dealt with Safeguards Agreement (and Accession Agreement and §421 of U.S. Trade Act.) U.S. is Respondent and won. Usually always lose these cases involving trade remedies.

Case 3 (Various Products – CVD & A/D) (AB 2014). Decided that under Subsidies Code the U.S. GPX legislation (2012) that allows countervailing duties as to imports from nonmarket economies (NMEs) is valid. (Also double remedies -- ADD and CVD – a problem). Case 7 (Certain Products from China) (AB 2014). Decided that a 'State Owned Enterprises' (SOE) is not necessarily a 'Public Body' under Subsidies Code as to allow a finding of subsidies.

Case 4 (China IPR). Dealt with TRIPS and enforcement of IPR and involved incorporation of Berne Agreement. China only had a minor loss. Criminal law enforcement standard not too tough. China promptly implemented changes.

Case 6 (Electronic Payments) (Panel 2012). Under the GATS Agreement (Services Agreement). Determined that the contested electronic network for clearing financial transactions (for credit cards) was scheduled as a 'commitment' but China did not violate its obligation.

Case 8 (Three Pending Cases) – Section 232, IPR, Retaliatory Duties.