

Case Analysis of Countervailing Investigation

-- Taking the White Feather Chicken Case of the United States as an Example

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Abstract

With the continuous development of China in the field of world trade, the disputes between China and the United States in the trade of agricultural products are also increasing. Anti dumping and countervailing have gradually become important means in the trade disputes between China and the United States. In 2016, China continued to impose anti-dumping duties on imported white feather broiler products originating in the United States, and agricultural trade friction once again became a new focus of bilateral trade between China and the United States. This paper takes the American white feather chicken case as an example to analyze the countervailing investigation.

Keywords

Countervailing Investigation; Case Analysis; White Feather Chicken Case.

1. Introduction

With China's increasingly important role in the world trade system, the United States, the European Union and other trading bodies have changed their previous practice of not conducting countervailing investigations against non-market economy countries. They have imposed anti-dumping duties and countervailing duties on Chinese products, and China has accordingly conducted "double countervailing investigations" on foreign products. Through the analysis of recent cases, we find that the controversy focuses on whether domestic subsidies reduce product prices. Even if China loses the WTO case, it can still protect its own interests through the distribution of burden of proof that the investigation institution proves that there is no double calculation.

2. Countervailing

2.1. Subsidies

Subsidy refers to the financial assistance provided by the government or public institutions to specific industries or regions to support the development of specific industries or regions, so that they can obtain subsidies that are difficult to obtain under the conditions of market economy. Subsidies enable market participants to obtain advantages that are difficult to obtain under the market economy conditions. In order to offset the advantages that should not be obtained, WTO and the world's major trading bodies have formulated legal rules to regulate the above issues.

2.2. Countervailing

In the 16th and 17th centuries, subsidies became a policy of many capitalist countries. These countries implement incentives and support measures to support their exports, so as to occupy

more overseas markets and obtain more international market shares. Countervailing is accompanied by subsidies, and the importing country counteracts the behavior of the exporting country. From the legal point of view, countervailing is a legal act that the countervailing authorities of the importing country levy countervailing duties and other measures to offset the consequences of damaging the domestic industry or hinder the establishment of the domestic industry.

2.3. Three Types of Subsidies

2.3.1. Prohibited Subsidies

Prohibited subsidies, i.e., unconditionally prohibited subsidies, are only applicable to export activities in law or in fact, or as one of many conditions, conditional subsidies are provided for export activities. In other words, in law or in fact, only domestic products are used to replace imports, or as one of many conditions, conditional subsidies are provided to replace imports with domestic products. Specifically, the prohibited subsidy is a special subsidy.

2.3.2. Actionable Subsidies

Actionable subsidies refer to subsidies that are allowed to be implemented within a certain range. However, if, in the course of implementation, the trade of other members is seriously damaged or has a serious discriminatory impact on their economic interests, the members affected by the damage or discrimination may lodge a complaint against them. If the subsidy has an adverse effect on other importing members, the subsidies listed in the SCM Agreement can be taken.

2.3.3. Non Actionable Subsidies

Non actionable subsidies mean that members will not be opposed by other members when implementing such subsidies or taking countervailing measures. Such subsidies are not exclusive, and even if they are exclusive, they also meet the conditions stipulated in the SCM Agreement.

3. Case Introduction

In 2016, the Ministry of Commerce of China announced that from September 27, 2016, it would continue to impose anti-dumping duties on imported white feather broiler products originating in the United States for a period of five years. China's Ministry of Commerce said that according to the ruling of the investigation authority, if the anti-dumping measures are terminated, the dumping of imported white feather broiler products originating in the United States against China may continue or recur, and the damage caused to China's white feather broiler industry may continue or recur. Because the price of chicken products exported by the United States to China is very low, especially the poultry by-products, these products easily occupy the Chinese market, which has impacted the poultry breeding, feed, food and other industries. Not long after, the United States filed a complaint with the WTO about China's anti-dumping and countervailing measures against white feather broilers.

4. Case Analysis

This case involves three types of subsidies: upstream subsidies, Arkansas investment and job creation stimulus plan and Alabama income tax relief stimulus plan.

4.1. Upstream Subsidies

Including direct payment projects and crop insurance projects. With regard to the former, the Ministry of Commerce of China believes that the US government directly provides financial assistance to corn and soybean growers in the form of free grants, which belongs to the direct

provision of funds by the governments of exporting countries in the form of grants, and constitutes subsidies under Article 3 of China's Countervailing regulations. With regard to the latter, the Ministry of Commerce believes that the US government has paid subsidies to insurance companies that underwrite corn, soybeans and other crop insurance. It is the government of the exporting country that entrusts or instructs private institutions to provide goods and services other than general infrastructure, which also constitutes subsidies.

4.2. Arkansas Investment and Job Creation Stimulus Plan

According to the laws of Arkansas, the state government provides income tax credit, sales tax and use tax credit and tax refund and cash incentives to non-retail enterprises in specific industries, which belongs to the government of the exporting country giving up or not collecting the receivable income and constitutes a subsidy. According to the laws of the state, the above preferential policies are not applicable to retail enterprises. The director of the State Economic Development Commission decides whether to obtain preferential policies instead of automatically obtaining them according to the conditions stipulated by the law. Some incentive measures also need to be approved by specific procedures, so they are specific.

4.3. Alabama Income Tax Relief Stimulus Plan

According to the laws of Alabama, the state government waives the enterprise income tax on the approved company through the income tax reduction project, which belongs to the government of the exporting country waiving or not collecting the receivable income and constitutes a subsidy. According to the Alabama act of 1975, enterprises applying for income tax relief must meet the requirements of business activities, capital costs, employment and wages, and only a limited number of specific industries can obtain the above benefits.

4.4. Analysis Results

First, the subsidies involved in the case are not export subsidies and import substitution subsidies explicitly prohibited by the SCM Agreement, but domestic subsidies. The government of the exporting country either buys its own products, or provides funds to the enterprise, or gives up the receivable income, which belongs to the situation of actionable subsidies. If it is specific, it violates the agreement, and it is necessary to levy countervailing duties to offset unfair competitive advantages. However, how to prove the specificity of the above-mentioned measures requires the investigation institution to analyze the corresponding regulations and conduct field investigation, which has certain technical difficulties.

Second, China is currently suing the United States in the WTO for the practice of "double anti investigation". The expert group has issued the report of the expert group and does not think that the "double anti investigation" violates the rules of the WTO agreement. The expert group's ruling can be summarized as follows: the expert group believes that the WTO rules, including the SCM Agreement and the protocol on China's accession to the WTO, do not explicitly involve the simultaneous conduct of anti-dumping and countervailing investigations. Paragraph 5 of Article 6 of GATT 1994 prohibits the simultaneous imposition of anti-dumping and Countervailing duties, which are aimed at export subsidies rather than domestic subsidies, and the subsidies in this case are domestic subsidies. Therefore, paragraph 5 of Article VI of GATT 1994 does not apply to domestic subsidies. Since the legal rules and dispute settlement practices do not prohibit "double anti-dumping investigations", if the US Department of commerce can prove that it is necessary to levy anti-dumping duties and countervailing duties at the same time to offset the unfair competitive advantages of Chinese products and producers, then it is in line with the legal rules.

Third, even if China loses in the WTO dispute settlement, there is still room for refutation, that is, it proves that the simultaneous imposition of anti-dumping duties and countervailing duties has led to double calculation and caused unreasonable burden to enterprises. From the entity

point of view, in the case of export subsidies, exporters will reduce the price of products, and the imposition of anti-dumping duties is sufficient to offset the unfair competitive advantage of products. If anti-dumping duties and countervailing duties are levied at the same time, the double calculation part needs to be deducted.

However, if the subsidies are manifested as domestic subsidies, such as providing loans with preferential interest rates, providing land use rights at low prices or even free of charge, and extending the term of land use rights, such domestic subsidies may not have a direct impact on product prices. If anti-dumping duties and countervailing duties are levied on the producers who have received the above domestic subsidies, the purpose of the anti-dumping duties is to offset the unfair competitive advantages of the products, and the purpose of the countervailing duties is to offset the financial assistance, income or price support received by the producers. Under the above circumstances, if the manufacturer reduces the product price because of receiving domestic subsidies, and simultaneously collects anti-dumping duties and countervailing duties, it constitutes double calculation and violates the rules. This is also the reason why Chinese enterprises win the GPX case. If the producer does not reduce the product price because of receiving domestic subsidies, it is in line with the rules to levy anti-dumping duties and countervailing duties at the same time.

5. Summary

At present, China has become an important member of the world trade system, and its performance in the WTO is increasingly active. In terms of both rule making and dispute settlement, our country has gradually re entrants and gradually become active participants. Under the conditions of conforming to the rules, we will make full use of various means to safeguard our own interests. From a long-term perspective, China's full entry into the world trade system is beneficial to itself and the world.

At present, China is still regarded as a transition economy, and Chinese products have been subject to frequent investigations of trade remedy measures in the world market. The recent "double anti investigation" is only a manifestation of the intensification of trade protectionism. The recently released report of the expert group largely avoids the question of whether the "double anti investigation" conforms to the WTO rules. Although the expert group can find out several legal reasons by doing so, it actually acquiesces in the "double anti investigation". Under the above circumstances, the interests of the enterprise can only be safeguarded through litigation in the domestic courts of the United States and disputes over factual issues. Obviously, the trend of trade protectionism has intensified. Will the negative trend turn into a trade war? In fact, the United States, the European Union and China all understand that they are indispensable to each other, and the trade war will cause heavy losses to all parties. Of course, it is very likely that trade disputes will arise under certain circumstances and even in quite a few cases. The world will be in a state of "controllable trade protectionism" for a long time.

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