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China – Domestic Support for Agricultural Producers: WTO Dispute DS511

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Selected Paper prepared for presentation at the International Agricultural Trade Research Consortium's (IATRC's) 2017 Annual Meeting: Globalization Adrift, December 3-5, 2017, Washington, DC.

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China – Domestic Support for Agricultural Producers: WTO Dispute DS511

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**Agricultural Trade WTO Disputes between the United States and China:
Broiler Duties, Domestic Support and TRQ Administration
International Agricultural Trade Research Consortium (IATRC)
Annual Meeting
Washington, D.C., 3–5 December 2017**

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What is the DS511 dispute about?

- **Support through some policies is subject to limits**
 - One AMS for each product *Aggregate Measurement of Support*
 - Product's AMS = market price support (MPS) + payments
 - » WTO MPS is different from economic MPS
 - Administered price, not domestic market price
 - Fixed external reference price FERP, not contemporaneous border price
 - 1986-88 fixed years for original members
 - Eligible production, not total production
- **China's WTO limits on AMSs**
 - 8.5% of product's value of production in each year
- **US claims AMSs exceeded limits**
 - Wheat, rice (*Indica* and *Japonica*) and corn
 - In 2012, 2013, 2014, and 2015
 - » Can calculate excess in 2015 of RMB 665 billion or more than \$100 billion

DS511 process

- **US initiated dispute in September 2016**
 - Panel established in January 2017; composed in June 2017
 - » : Helgason (Iceland), Dorantes Sánchez (Mexico), Feldman (Canada)
- **First written submissions to Panel**
 - United States: September 2017
 - » Made public – unusual but laudable practice of USTR in disputes
 - Understand China made first written submission
 - » Not public; China claims compliance, otherwise no dispute
- **Very large number of “third parties” : 27**
 - Shows systemic interest in outcome of dispute on domestic support
 - » Only one earlier such dispute: *Korea-Beef* in 2000 (DS161, DS169)
 - » Expect third-party submissions to argue particular interpretations
- **Panel may issue findings in spring 2018**
 - Appeals? May take until end of year or longer

Potential issues for legal analysis in DS511

- **Applicability of *Korea-Beef* jurisprudence**
 - “In accordance with” Annex 3 vs. “taking into account” CD&M
 - “Constituent Data and Methodology” from accession negotiations
- **What is WTO market price support?**
 - Annex 3 gives MPS calculation method; some variables not defined
 - » Therefore: different interpretations of variables going into calculations
 - US defines MPS and related terms; calculates levels with its definition
 - China’s CD&M: calculates MPS using its identified variables
- **Eligible production?**
 - *Korea-Beef*: “fit or entitled” = announced quantity to be purchased
 - US says China’s total production in major provinces & regions with mandated MPS programs
 - China’s CD&M: only quantities purchased by state-owned enterprises

Potential issues for legal analysis in DS511 (cont'd)

- **Admin price and ref price for same quality of rice?**
 - US says adjust to similar quality
 - » Adjusts reference price down to unmilled rice, as in admin price
 - China's CD&M: appears to adjust unmilled admin price up to milled
- **Years for fixed external reference price?**
 - Other years than 1986-88 is standard practice in accessions
 - » CD&M negotiated with US and others; accepted by all
 - US says 1986-88, as per Annex 3 of Agreement on Agriculture
 - China's CD&M: 1996-98
- **Other possible issues**
 - Any difference between admin price and “applied” admin price in China's programs?
 - Any significance of need for approval to activate MPS “implementation plan” before purchases can be made?

Rulings matter for Members' policies

- **Eligible production: calculate differently from now?**
 - Legal affirmation of “purchased” quantity, not economic “total”
 - » Erodes WTO power to curb trade-distorting support
 - Or contrary: “total” production, not only “purchased”
 - » Will more Members face risk of challenge?
- **Admin price and ref price at same quality: important for all**
- **1986-88 ref price instead of CD&M ref price affects some**
 - 36 Article XII accessions to the WTO: only one used 1986-88
 - » Ten showed MPS in CD&M
 - Including China 96-98, Chinese Taipei 90-92, Viet Nam 99-01, Ukraine 04-06, Russia 06-08, Kazakhstan 10-12
- **Implications large enough to affect ongoing negotiations?**
 - “Domestic support” and “Public stockholding” (i.e., stock *acquisition*)
 - » Stronger push to shelter excess MPS from legal challenge?

Alternative Measurements of China's WTO MPS

$$\text{WTO MPS}_t = [\text{Applied Admin Price}_t - \text{FERP}_{\text{fixed years}}] \times [\text{Eligible Production}_t]$$

Measurements of WTO MPS

(expressed as percent of China's total Value of Production of the crop)

	Year			
	2012	2013	2014	2015
Alternative 1: FERP: 1996-98; Eligible Production: China's total production				
Wheat	16	23	27	28
Rice				
Unmilled AAPs and FERPs	35	43	45	46
Unmilled AAPs; milled FERPs	5	4	6	6
Corn	41	48	47	42

Notes: This slide and the next one show China's MPS as a percentage of China's total value of production (VoP) of the crop under two choices for the fixed years for FERP (1996-98 and 1986-88 (next slide)) and two choices for eligible production (China's total production (above) and total production only in provinces where MPS programs are mandated (next slide)). China's total production gives a larger MPS than only the major provinces (compare alternatives 1 and 2) and 1986-88 gives a larger MPS than 1996-98 (compare alternatives 2 and 3). Percentages exceeding 8.5% indicate non-compliance with China's WTO commitments under the assumptions and interpretations adopted for these calculations. For rice in this slide, comparing the first and second rows shows the effect of using a FERP for milled rice instead of unmilled rice in calculating the price gap. Calculations available on request.

Alternative Measurements of China's WTO MPS

$$\text{WTO MPS}_t = [\text{Applied Admin Price}_t - \text{FERP}_{\text{fixed years}}] \times [\text{Eligible Production}_t]$$

Measurements of WTO MPS

(expressed as percent of China's total Value of Production of the crop)

	Year			
	2012	2013	2014	2015
Alternative 2: FERP: 1996-98; Eligible Production: Major provinces				
Wheat	12	18	22	22
Rice	27	34	35	36
Corn	17	21	21	19
Alternative 3: FERP: 1986-88; Eligible Production: Major provinces (matches U.S. First Submission)				
Wheat	58	61	63	65
Rice				
Weighted Average	59	66	67	68
<i>Indica</i>	58	66	67	68
<i>Japonica</i>	61	67	67	69
Corn	33	38	37	39

Notes: Calculations available on request; "provinces" includes autonomous regions

Economic and Policy Implications

Illustration #1: What was the economic MPS?

$$\text{Economic MPS}_t = [\text{Domestic Price}_t - \text{Border Price}_t] \times [\text{Total Production}_t]$$

Economic MPS

(expressed as percent of China's total Value of Production of the crop)

	Year			
	2012	2013	2014	2015
Wheat	28	27	32	36
Rice	29	32	32	36
Corn	14	23	26	32

Source: OECD (Producer and Consumer Support Estimates database). Domestic and border prices are measured at China farm-gate level.

Notes: This slide shows that the economic MPSs as calculated by OECD were positive and in double digits during 2012-2015. This is the context in which, depending on legal interpretations, applying the WTO rules could have the effect of reducing economic market price support.

Illustration #2: How much would AAP need to be reduced to make WTO MPS = 8.5% of China's total Value of Production of the crop?

Percent reduction required

	Year			
	2012	2013	2014	2015
Alternative 2: FERP: 1996-98; Eligible Production: Major provinces				
Wheat				
VoP constant	-5	-13	-17	-17
Proportionate VoP decline	-6	-15	-19	-19
Rice				
VoP constant	-26	-32	-33	-34
Proportionate VoP decline	-30	-36	-37	-38
Alternative 3: FERP: 1986-88; Eligible Production: Major provinces				
(matches U.S. First Submission; calculated here only for holding VoP constant)				
Wheat	-67	-69	-71	-71
Rice	-69	-72	-72	-72

Notes: This slide shows the reductions of AAPs that would have brought China's MPS to the level of 8.5% of value of production (VoP) of the crop. The two rows in Alternative 2 illustrate the effect of assuming that China's total value of production (the denominator in the percentage calculation) either (i) stays constant when the AAP is reduced or (ii) declines in proportion to the reduction in AAP as the domestic price of the crop is assumed to fall. In Alternative 3, the border prices would be the floor for domestic prices. Calculations available on request; "provinces" includes autonomous regions.

Illustration #3: How would the reduced AAP compare to the border price?

Reduced AAP (from Illustration #2) would be above (+) or below (-) the OECD contemporaneous Border Price by these percentages

	Year			
	2012	2013	2014	2015
Alternative 2: FERP: 1996-98; Eligible Production: Major provinces				
Wheat				
VoP constant	24	13	19	27
Proportionate VoP decline	23	11	16	23
Rice				
VoP constant	9	15	12	21
Proportionate VoP decline	4	8	5	13

Alternative 3: FERP: 1986-88; Eligible Production: Major provinces
 (matches U.S. First Submission; calculated here only for holding VoP constant)

Wheat	-57	-60	-58	-56
Rice	-54	-52	-53	-50

Notes: This slide shows that with the 1996-98 FERP, but not with the 1986-88 FERP, China could maintain AAPs above OECD border prices while keeping WTO MPS at 8.5% of China's total value of production (VoP) of the crop. In Alternative 3, the border prices would be the floor for domestic prices. Calculations available on request; "provinces" includes autonomous regions.

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Thank you!

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