

US court halts tariffs tied to Chinese subsidies

By Alan Beattie in Washington

A federal court has stopped the US administration from imposing emergency anti-subsidy tariffs on imports from China, affecting several current cases and potentially forcing Congress to legislate to permit such actions in future.

A federal circuit court, the highest level under the Supreme Court, on Monday said the US could not use so-called “countervailing duties” against imports from highly regulated countries such as China which are designated as “non-market economies”.

In a case involving the commerce department’s imposition of countervailing duties on Chinese tyre imports at the behest of US producers, the court ruled that Congress had previously accepted that such tariffs could not apply to non-market economies. “Although commerce has wide discretion in administering countervailing duty and anti-dumping law, it cannot exercise this discretion contrary to congressional intent,” the court ruled. “[I]f commerce believes that the law should be changed, the appropriate approach is to seek legislative change.”

Countervailing duties are imposed against imports deemed to be unfairly state-subsidised. A landmark 1984 US court ruling prevented their use against non-market economies, in effect saying it was double-counting to impose them on top of so-called “anti-dumping” tariffs, which are used against imports deemed to be unfairly priced. In 2007, the commerce department allowed countervailing duty petitions against non-market economies to resume. Since then, there have been 23 successful cases against imports from China and Vietnam. Five more cases are pending.

Jeffrey Grimson, an attorney at the law firm Mowry & Grimson in Washington, said: “It will be easy for Congress to legislate to undo this if the political will is there, so in the longer term the ruling may prove to be just a bump in the road, but cases since 2007 that are still pending are now vulnerable.” Mowry & Grimson was not involved in this case, but has acted for the Chinese ministry of commerce in previous cases.

The commerce department described itself as “deeply disappointed” with the ruling and said it was currently considering judicial and legislative options. The administration could appeal the case to the US Supreme Court, but Mr Grimson said the court was rarely interested in trade cases.

The ruling will hand Beijing a propaganda victory in its ongoing campaign to portray US blocks on imports as illegitimate. Earlier this year, a World Trade Organisation judicial panel ruled that the US’s simultaneous imposition of both countervailing and anti-dumping duties broke WTO law in a case brought by China.

Countervailing duties feature in some of the most high-profile issues in the vexed US-China trading relationship. Proposals under consideration in the US Congress to punish China for manipulating its exchange rate would force the Commerce department to use estimates of currency undervaluation when calculating countervailing duties. A closely watched case brought recently by an association of US solar panel companies, the first in the renewable energy sector, requested the imposition of both anti-dumping and countervailing duties on imports of Chinese solar cells.