

## VIII. CONCLUSIONS AND RECOMMENDATION

### A. CONCLUSIONS

8.1 In the light of the findings set forth in this Report, the Panel concludes that China acted inconsistently with:

- (a) Article 11.3 of the SCM Agreement, on the basis that MOFCOM initiated countervailing duty investigations into each of the 11 programmes challenged before the Panel by the United States, without sufficient evidence to justify this;
- (b) Articles 12.4.1 of the SCM Agreement and 6.5.1 of the Anti-Dumping Agreement, on the basis that MOFCOM did not require the applicants to furnish non-confidential summaries in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence;
- (c) Article 12.7 of the SCM Agreement in connection with MOFCOM's use of a 100% utilization rate in calculating the subsidy rates for the two known respondents under certain procurement programmes;
- (d) Articles 6.8, 6.9, 12.2, 12.2.2 and paragraph 1 of Annex II of the Anti-Dumping Agreement, in connection with the resort to facts available to calculate the "all others" dumping margin for unknown exporters and due to deficiencies in the related essential facts disclosure and public notice and explanation;
- (e) Articles 12.7, 12.8, 22.3 and 22.5 of the SCM Agreement, in connection with the resort to facts available to calculate the "all others" subsidy rate for unknown exporters and due to deficiencies in the related essential facts disclosure and public notice and explanation;
- (f) Articles 15.1, 15.2, 12.8 and 22.5 of the SCM Agreement and 3.1, 3.2, 6.9 and 12.2.2 of the Anti-Dumping Agreement, in connection with MOFCOM's findings regarding the price effects of subject imports and due to deficiencies in the related essential facts disclosure and public notice and explanation;
- (g) Articles 15.1, 15.5, 12.8 and 22.5 of the SCM Agreement and 3.1, 3.5, 6.9 and 12.2.2 of the Anti-Dumping Agreement, in connection with MOFCOM's finding that subject imports caused material injury to the domestic industry and due to deficiencies in the related essential facts disclosure and public notice and explanation; and
- (h) Article 10 of the SCM Agreement and Article 1 of the Anti-Dumping Agreement, as a consequence of the foregoing violations of these Agreements.

8.2 In the light of the findings set forth in this Report, the Panel concludes that the United States has **not** established that China acted inconsistently with:

- (a) Article 12.2.2 of the Anti-Dumping Agreement by not including in a public notice or separate report the data and calculations used to determine the respondent companies' final dumping margins;
- (b) Article 12.7 of the SCM Agreement due to MOFCOM's resort to facts available to calculate the subsidy rates for the two known respondents under certain procurement programmes; and

- (c) Article 22.3 of the SCM Agreement in connection with MOFCOM's explanation of the findings and conclusions supporting its determination that the bidding process under the United States Government procurement statutes at issue did not result in prices that reflected market conditions.

8.3 In the light of the findings set forth in paragraphs 8.1 and 8.2 of this Report, the Panel does not consider it necessary to make findings with respect to the United States' claims under:

- (a) Article 11.2 of the SCM Agreement; and
- (b) Article VI:2 of the GATT 1994.

## B. RECOMMENDATION

8.4 Under Article 3.8 of the DSU, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, to the extent China has acted inconsistently with certain provisions of the SCM and Anti-Dumping Agreements, we conclude that it has nullified or impaired benefits accruing to the United States under those Agreements.

8.5 Pursuant to Article 19.1 of the DSU, having found China acted inconsistently with certain provisions of the SCM and Anti-Dumping Agreements, we recommend China bring its measures into conformity with its obligations under those Agreements.

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