

## XVII. CONCLUSIONS AND RECOMMENDATIONS

17.1 For the reasons set out above, we conclude:

- (a) in respect of China's claims concerning the USDOC's determinations of financial contributions in the countervailing duty investigations at issue, that:
  - (i) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 1.1(a)(1) of the SCM Agreement in determining in the relevant investigations at issue that SOEs and SOCBs constituted "public bodies";
  - (ii) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 1.1 of the SCM Agreement by failing to determine, in the LWR, CWP, and OTR investigations, that trading companies were "entrusted" or "directed" by the government to make financial contributions to producers of the investigated products, in the form of the provision of goods;
- (b) in respect of China's claims concerning the USDOC's specificity determinations in the countervailing duty investigations at issue, that:
  - (i) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 2.1(a) of the SCM Agreement by determining in the OTR investigation that lending by SOCBs to the OTR tire industry was *de jure* specific;
  - (ii) The USDOC acted inconsistently with the obligations of the United States under Article 2 of the SCM Agreement by determining that the government provision of land-use rights, in the LWS investigation, was regionally-specific;
- (c) in respect of China's claims concerning the USDOC's benefit determinations in the countervailing duty investigations at issue, that:
  - (i) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Articles 10, 14, 19.1, 19.4 or 32.1 of the SCM Agreement or Article VI:3 of the GATT 1994 by failing to conduct a pass-through analysis in the OTR investigation to determine whether any subsidy benefits received by trading companies selling rubber inputs were passed through to the OTR producers purchasing those inputs;
  - (ii) The USDOC acted inconsistently with the obligations of the United States under Articles 1.1 and 14 of the SCM Agreement by failing to ensure in the OTR investigation that the methodology it used to establish the existence and amount of benefit to tire producers from their purchases of SOE-produced inputs from trading companies did not calculate a benefit amount in excess of that conferred by the government provision of those inputs;
  - (iii) In the light of our findings in respect of China's claims on facts available (paragraph 17.1(f)(ii), *infra*), we apply judicial economy in respect of China's claims concerning the USDOC's benefit determinations in the LWR and CWP investigations regarding the provision of HRS by trading companies;

- (iv) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 14(d) of the SCM Agreement by not "offsetting" positive benefit amounts with "negative" benefit amounts, either across different kinds of rubber or across different months of the period of investigation, in the OTR investigation; and that China thus also did not establish that the United States also thereby acted inconsistently with its obligations under Articles 10, 19.1, 19.4, or 32.1 of the SCM Agreement, or Article VI:3 of the GATT 1994;
  - (v) China's claims in respect of the benchmarks actually used by the USDOC to calculate the benefit from the provision of loans and land-use rights by China in the LWS, OTR and CWP investigations, respectively, fall within our terms of reference;
  - (vi) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 14(d) of the SCM Agreement by rejecting in-country private prices in China as benchmarks for HRS in the CWP and LWR investigations and for BOPP in the LWS investigation;
  - (vii) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 14(b) of the SCM Agreement by rejecting interest rates in China as benchmarks for calculating the benefit from RMB-denominated loans from SOCBs, in the CWP, LWS and OTR investigations, or that the benchmarks actually used in respect of the RMB-denominated loans were inconsistent with those obligations;
  - (viii) The USDOC acted inconsistently with the obligations of the United States under Article 14(b) of the SCM Agreement by using average annual interest rates as benchmarks for GTC's U.S. dollar-denominated loans from SOCBs in the OTR investigation;
  - (ix) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 14(d) of the SCM Agreement by rejecting land-use prices in China as benchmarks for government-provided land-use rights in the LWS and OTR investigations, or that the benchmarks actually used were inconsistent with those obligations;
- (d) In respect of China's claims of consequential violations of Articles 10 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994 in connection with its claims referred to at paragraphs 17.1 (a)(i) and (ii), (b)(i) and (ii), and (c)(ii), (iv), (vi), (vii), (viii) and (ix): as indicated at paragraph 13.1, we apply judicial economy.
- (e) in respect of China's double remedy claims, that:
- (i) The "omission" challenged by China as part of its "as such" claims with respect to double remedies falls outside our terms of reference; consequently, we also find that China's "as such" claims under Articles 10, 19.3, 19.4 and 32.1 of the SCM Agreement and Articles VI and I:1 of the GATT 1994 equally fall outside our terms of reference;
  - (ii) China did not establish that the United States acted inconsistently with its obligations under Articles 10, 19.3, 19.4, and 32.1 of the SCM Agreement or under Article VI:3 of GATT 1994 by reason of the USDOC's use of its NME

methodology in the four anti-dumping investigations at issue and the imposition of anti-dumping duties on that basis concurrently with the imposition of countervailing duties on the same products in the four countervailing duty investigations at issue;

- (iii) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Articles 12.1 and 12.8 of the SCM Agreement by failing to give the Government of China and interested parties "notice" of the information it required to evaluate the existence of a double remedy, and to inform them of the essential facts under consideration that would "form the basis" for its determination in respect of double remedies, in the four countervailing duty investigations at issue;
  - (iv) China did not establish that the United States acted inconsistently with its obligations under Article I:1 of GATT 1994 when, as a result of the investigations at issue, it concurrently imposed anti-dumping duties calculated under the U.S. NME methodology and countervailing duties;
- (f) in respect of China's claims of procedural violations in the countervailing duty investigations at issue, that:
- (i) China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 12.1.1 of the SCM Agreement by failing to provide the Government of China and investigated producers at least 30 days to respond to the "supplemental" questionnaires and "new allegation" questionnaires used in the four countervailing duty investigations at issue;
  - (ii) The USDOC acted inconsistently with the obligations of the United States under Article 12.7 of the SCM Agreement by applying facts available in the LWR and CWP investigations to determine the amount of HRS investigated producers purchased from trading companies that originated from SOEs; and
  - (iii) China's claim of violation of Article 12.1 is outside our terms of reference as it is not included in China's request for establishment of the Panel.

17.2 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, we conclude that to the extent that the United States has acted inconsistently with certain provisions of the SCM Agreement and of the GATT 1994, it has nullified or impaired benefits accruing to China under these agreements.

17.3 Pursuant to Article 19.1 of the DSU, having found that the United States has acted inconsistently with provisions of the SCM Agreement and of the GATT 1994 as set out above, we recommend that the United States bring its measures into conformity with its obligations under those Agreements.

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