

5 FINDINGS AND CONCLUSIONS

5.1. For the reasons set out in this Report, the Appellate Body:

- a. upholds the Panel's finding, in paragraph 4.2 of the Panel's Preliminary Ruling and paragraph 7.4 of the Panel Report, that claims under Articles 10, 19.3, and 32.1 of the SCM Agreement were identified in Part D of China's panel request consistently with the requirements of Article 6.2 of the DSU and were thus within the Panel's terms of reference;
- b. reverses the Panel's interpretation of Article X:2 of the GATT 1994, in paragraph 7.155 of the Panel Report, in respect of the baseline of comparison for measures of general application "effecting an advance in a rate of duty or other charge on imports under an established and uniform practice", and in paragraph 7.203 of the Panel Report, in respect of measures of general application "imposing a new or more burdensome requirement, restriction or prohibition on imports";
- c. reverses the Panel's application of its interpretation of Article X:2 of the GATT 1994 to the measure at issue and, in particular, the Panel's findings, in paragraph 7.191 of the Panel Report, that "China has not established that Section 1 [of PL 112-99] is a provision 'effecting an advance in a rate of duty or other charge on imports under an established and uniform practice'", and in paragraph 7.208 of the Panel Report, that "China has not established that Section 1 [of PL 112-99] is a provision 'imposing a new or more burdensome requirement, restriction or prohibition on imports'"; and accordingly
- d. reverses the Panel's findings, in paragraphs 7.209, 7.210.c, 7.211, and 8.1.b.ii of the Panel Report, that the United States has not acted inconsistently with Article X:2 of the GATT 1994, as Section 1 of PL 112-99 does not "effect[] an advance in a rate of duty or other charge on imports under an established and uniform practice, or impose a new or more burdensome requirement, restriction or prohibition on imports";
- e. declares moot and of no legal effect the Panel's findings:
 - i. in paragraphs 7.185 and 7.186 of the Panel Report, that the USDOC's practice of applying countervailing duties to China as an NME country between 2006 and 2012 was presumptively lawful under US law, as the USDOC's interpretation of US countervailing duty law governed in the absence of a binding judicial determination indicating otherwise; and
 - ii. in paragraph 7.159 of the Panel Report, that it is potentially relevant, and at a minimum not inappropriate, to address the issue of whether the USDOC's practice prior to enactment of Section 1 of PL 112-99 was lawful under US municipal law for purposes of an analysis under Article X:2 of the GATT 1994; and accordingly
- f. having reversed the Panel's findings regarding its interpretation and application of Article X:2 of the GATT 1994, and having declared moot and of no legal effect the Panel's findings regarding the lawfulness of the USDOC's practice in the context of the analysis under Article X:2 of the GATT 1994, does not consider it necessary to examine further China's claim under Article 11 of the DSU; and
- g. is unable to complete the analysis under Article X:2 of the GATT 1994 and determine whether Section 1 of PL 112-99 effected an "advance" in a rate of duty or imposed a "new or more burdensome" requirement or restriction on imports within the meaning of Article X:2 of the GATT 1994.

5.2. The Appellate Body recommends that the Dispute Settlement Body request the United States to bring the investigations and reviews identified in this Report, and in the Panel Report as modified by this Report, to be inconsistent with its obligations under the SCM Agreement into conformity with that Agreement.

Signed in the original in Geneva this 20th day of June 2014 by:

Ujal Singh Bhatia
Presiding Member

Seung Wha Chang
Member

Yuejiao Zhang
Member
