

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 The Panel recalls the United States' request pursuant to paragraph 18 of the Panel's Working Procedures that the Panel issue its findings in the form of a single document containing three separate reports with common sections on the Panel's conclusions and recommendations for each complaining party.¹¹²⁷ The European Communities and Canada were in agreement with the United States' request.¹¹²⁸ In accordance with the requests by the complaining parties, we therefore provide three separate sets of conclusions and recommendations.

A. COMPLAINT BY THE EUROPEAN COMMUNITIES (DS339): CONCLUSIONS AND RECOMMENDATIONS OF THE PANEL

- (a) With respect to imported auto parts in general, the Panel concludes:
- (i) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article III:2, first sentence of the GATT 1994 in that they subject imported auto parts to an internal charge in excess of that applied to like domestic auto parts;
 - (ii) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article III:4 of the GATT 1994 in that they accord imported auto parts less favourable treatment than like domestic auto parts; and
 - (iii) Policy Order 8, Decree 125 and Announcement 4 are not justified under Article XX(d) of the GATT 1994 as measures that are necessary to secure compliance with laws or regulations which are not inconsistent with the GATT 1994.
- (b) *In the alternative*, assuming that the measures fall within the scope of the first sentence of Article II:1(b) of the GATT 1994, with respect to imported auto parts in general, the Panel concludes:
- (i) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article II:1(a) and Article II:1(b), first sentence of the GATT 1994 in that they accord imported auto parts treatment less favourable than that provided for in the appropriate Part of China's Schedule of Concessions; and
 - (ii) Policy Order 8, Decree 125 and Announcement 4 are not justified under Article XX(d) of the GATT 1994 as measures that are necessary to secure compliance with laws or regulations which are not inconsistent with the GATT 1994.
- (c) with respect to CKD and SKD kits, the Panel concludes:
- (i) Policy Order 8, Decree 125 and Announcement 4 are not inconsistent with Article II:1(b) of the GATT 1994.

¹¹²⁷ See Section II.D above.

¹¹²⁸ European Communities' comments on the draft descriptive part of the Panel Report (4 October 2007); Canada's comments on the draft descriptive part of the Panel Report (4 October 2007).

8.2 With respect to the European Communities' claims that Policy Order 8, Decree 125 and Announcement 4 are inconsistent with the TRIMs Agreement and Article III:5 of the GATT 1994, the Panel has decided to exercise judicial economy.

8.3 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the measures listed above are inconsistent with the GATT 1994, they have nullified or impaired benefits accruing to the European Communities under those agreements.

8.4 Accordingly, the Panel recommends that the Dispute Settlement Body request China to bring these inconsistent measures as listed above into conformity with its obligations under the GATT 1994.

B. COMPLAINT BY THE UNITED STATES (DS340): CONCLUSIONS AND RECOMMENDATIONS OF THE PANEL

- (a) With respect to imported auto parts in general, the Panel concludes:
- (i) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article III:2, first sentence of the GATT 1994 in that they subject imported auto parts to an internal charge in excess of that applied to like domestic auto parts;
 - (ii) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article III:4 of the GATT 1994 in that they accord imported auto parts less favourable treatment than like domestic auto parts; and
 - (iii) Policy Order 8, Decree 125 and Announcement 4 are not justified under Article XX(d) of the GATT 1994 as measures that are necessary to secure compliance with laws or regulations which are not inconsistent with the GATT 1994.
- (b) *In the alternative*, assuming that the measures fall within the scope of the first sentence of Article II:1(b) of the GATT 1994, with respect to imported auto parts in general, the Panel concludes:
- (i) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article II:1(a) and Article II:1(b), first sentence of the GATT 1994 in that they accord imported auto parts treatment less favourable than that provided for in the appropriate part of China's Schedule of Concessions; and
 - (ii) Policy Order 8, Decree 125 and Announcement 4 are not justified under Article XX(d) of the GATT 1994 as measures that are necessary to secure compliance with laws or regulations which are not inconsistent with the GATT 1994.
- (c) with respect to CKD and SKD kits, the Panel concludes:
- (i) Policy Order 8, Decree 125 and Announcement 4 are not inconsistent with Article II:1(b) of the GATT 1994; and

- (ii) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with China's commitment under paragraph 93 of China's Working Party Report, which is an integral part of the WTO Agreement.¹¹²⁹

8.5 With respect to the United States' claims that Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article III:5 of the GATT 1994, TRIMs Agreement and SCM Agreement, the Panel has decided to exercise judicial economy.

8.6 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the measures listed above are inconsistent with the GATT 1994 and China's commitment under its Working Party Report, they have nullified or impaired benefits accruing to the United States under those agreements.

8.7 Accordingly, the Panel recommends that the Dispute Settlement Body request China to bring these inconsistent measures as listed above into conformity with its obligations under the GATT 1994 and the WTO Agreement.¹¹³⁰

C. COMPLAINT BY CANADA (DS342): CONCLUSIONS AND RECOMMENDATIONS OF THE PANEL

- (a) With respect to imported auto parts in general, the Panel concludes:
 - (i) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article III:2, first sentence of the GATT 1994 in that they subject imported auto parts to an internal charge in excess of that applied to like domestic auto parts;
 - (ii) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article III:4 of the GATT 1994 in that they accord imported auto parts less favourable treatment than like domestic auto part; and
 - (iii) Policy Order 8, Decree 125 and Announcement 4 are not justified under Article XX(d) of the GATT 1994 as measures that are necessary to secure compliance with laws or regulations which are not inconsistent with the GATT 1994.
- (b) *In the alternative*, assuming that the measures fall within the scope of the first sentence of Article II:1(b) of the GATT 1994, with respect to imported auto parts in general, the Panel concludes:
 - (i) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article II:1(a) and Article II:1(b), first sentence of the GATT 1994 in that they accord imported auto parts treatment less favourable than that provided for in the appropriate part of China's Schedule of Concessions; and
 - (ii) Policy Order 8, Decree 125 and Announcement 4 are not justified under Article XX(d) of the GATT 1994 as measures that are necessary to secure

¹¹²⁹ See paragraphs 7.740 and 7.758 above.

¹¹³⁰ See paragraphs 7.740 and 7.758 above.

compliance with laws or regulations which are not inconsistent with the GATT 1994.

- (c) with respect to CKD and SKD kits, the Panel concludes:
 - (i) Policy Order 8, Decree 125 and Announcement 4 are inconsistent with China's commitment under paragraph 93 of China's Working Party Report, which is an integral part of the WTO Agreement.¹¹³¹

8.8 With respect to Canada's claims that Policy Order 8, Decree 125 and Announcement 4 are inconsistent with Article III:5 of the GATT 1994 and the TRIMs Agreement, the Panel has decided to exercise judicial economy.

8.9 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the measures listed above are inconsistent with the GATT 1994 and China's commitment under its Working Party Report, they have nullified or impaired benefits accruing to Canada under those agreements.

8.10 Accordingly, the Panel recommends that the Dispute Settlement Body request China to bring these inconsistent measures as listed above into conformity with its obligations under the GATT 1994 and the WTO Agreement.¹¹³²

¹¹³¹ See paragraphs 7.740 and 7.758 above.

¹¹³² See paragraphs 7.740 and 7.758 above.