

VIII. Findings and Conclusion

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

- (a) with respect to "public bodies":
- (i) reverses the Panel's finding in paragraph 8.94 of the Panel Report that the term "public body" in Article 1.1(a)(1) of the *SCM Agreement* means "any entity controlled by a government"; and, accordingly, reverses the Panel's finding in paragraph 17.1(a)(i) of the Panel Report⁵⁹⁷ that 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* by determining in the relevant investigations at issue that SOEs and SOCBs constituted "public bodies";
- (ii) in completing the analysis of China's claims under Article 1.1(a)(1) of the *SCM Agreement*:
- finds that the USDOC's determinations, in the four countervailing duty investigations at issue, that the SOE input suppliers constituted "public bodies", are inconsistent with Article 1.1(a)(1) and, consequently, with the United States' obligations under Articles 10 and 32.1 of the *SCM Agreement*;
 - finds that China did not establish that the USDOC's determination that the SOCBs in the OTR investigation constituted "public bodies" is inconsistent with Article 1.1(a)(1) of the *SCM Agreement*; and
- (iii) finds that China has failed to substantiate its claim that the Panel acted inconsistently with Article 11 of the DSU by improperly relying on municipal law;

⁵⁹⁷See also Panel Report, paras. 8.138 and 8.143.

- (b) with respect to specificity:
- (i) upholds the Panel's finding in paragraph 17.1(b)(i) of the Panel Report⁵⁹⁸ that 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 SOCB lending was specific to the tyre industry; and
 - (ii) finds that the Panel did not err in its interpretation of the term "subsidy" in Article 2.2 of the *SCM Agreement* and rejects China's allegations of error in respect of a Panel statement concerning a "distinct regime" in the context of the LWS investigation;
- (c) with respect to the benchmarks used to calculate benefit:
- (i) upholds the Panel's finding in paragraph 17.1(c)(vi) of the Panel Report⁵⁹⁹ that 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 rejects China's claim that the Panel acted inconsistently with Article 11 of the DSU by attributing to the USDOC a rationale that was not found in the CWP and LWR determinations;
 - (ii) upholds the Panel's finding in paragraph 10.148 of the Panel Report⁶⁰⁰ that China did not establish that the USDOC's decision not to rely on interest rates in China as benchmarks for SOCB loans denominated in RMB in the CWP, LWS, and OTR investigations was inconsistent with the obligations of the United States under Article 14(b) of the *SCM Agreement*; and
 - (iii) finds that, in assessing the consistency of the proxy benchmark used by the USDOC with Article 14(b) of the *SCM Agreement*, the Panel failed to make an objective assessment of the matter before it as required by Article 11 of the DSU and, therefore, reverses the Panel's finding in paragraph 10.209 of the Panel Report⁶⁰¹ that China did not establish that the benchmark actually

⁵⁹⁸See also Panel Report, para. 9.107.

⁵⁹⁹See also Panel Report, para. 10.61.

⁶⁰⁰See also Panel Report, para. 17.1(c)(vii).

⁶⁰¹See also Panel Report, para. 17.1(c)(vii).

used by the USDOC to calculate the benefit from RMB-denominated SOCB loans in the CWP, LWS, and OTR investigations was inconsistent with the obligations of the United States under Article 14(b) of the *SCM Agreement*; but finds that it is unable to complete the legal analysis of China's claim under that provision;

- (d) with respect to "double remedies":
- (i) finds that the imposition of double remedies, that is, the offsetting of the same subsidization twice by the concurrent imposition of anti-dumping duties calculated on the basis of an NME methodology and countervailing duties, is inconsistent with Article 19.3 of the *SCM Agreement*; and, therefore
 - (ii) reverses the Panel's findings in paragraphs 14.129 and 14.130 of the Panel Report that Article 19.3 of the *SCM Agreement* does not address the issue of double remedies and that China did not establish that offsetting of the same subsidization twice through the concurrent imposition of anti-dumping duties calculated on the basis of an NME methodology and countervailing duties is inconsistent with Article 19.3 of the *SCM Agreement*⁶⁰²; and
 - (iii) finds that, in the four sets of anti-dumping and countervailing duty investigations at issue, by virtue of the USDOC's imposition of anti-dumping duties calculated on the basis of an NME methodology, concurrently with the imposition of countervailing duties on the same products, without having assessed whether double remedies arose from such concurrent duties, the United States acted inconsistently with its obligations under Article 19.3, and, consequently, under Articles 10 and 32.1 of the *SCM Agreement*.

612. The Appellate Body recommends that the DSB request the United States to bring its measures, found in this Report, and in the Panel Report as modified by this Report, to be inconsistent with the *SCM Agreement*⁶⁰³, into conformity with its obligations under that Agreement.

⁶⁰²See also Panel Report, para. 17.1(e)(ii).

⁶⁰³The Panel also recommended that the United States bring its measures found to be inconsistent with the GATT 1994 into conformity with its obligations under that Agreement. (Panel Report, para. 17.3) However, we do not see that the Panel made any such finding of inconsistency. Nor have we.

Signed in the original in Geneva this 18th day of February 2011 by:

Ricardo Ramírez-Hernández
Presiding Member

Lilia R. Bautista
Member

Peter Van den Bossche
Member