

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) Articles 3.1 and 3.2 of the Anti-Dumping Agreement, on the basis that China did not conduct an objective examination based on positive evidence of the effect of the dumped imports on prices in the domestic market for like products;
- (b) Articles 3.1 and 3.4 of the Anti-Dumping Agreement on the basis that China did not conduct an objective examination of the impact of the dumped imports on the domestic industry:
 - (i) by failing to evaluate the magnitude of the margin of dumping; and
 - (ii) in relation to its examination of certain individual injury factors.
- (c) Articles 3.1 and 3.5 of the Anti-Dumping Agreement on the basis that China did not conduct an objective examination on the basis of positive evidence:

- (i) of the causal relationship between dumped imports and the injury to the domestic industry in respect of MOFCOM's assessment of the prices of the dumped imports; and
 - (ii) in its non-attribution analysis, in particular in relation to MOFCOM's treatment of Smiths' arguments on product quality and technology factors, fair competition, Nucotech's alleged aggressive business expansion and alleged aggressive pricing policy.
- (d) Article 3.5 of the Anti-Dumping Agreement as a consequence of the inconsistencies with Articles 3.1, 3.2 and 3.4.
- (e) Article 6.5.1 of the Anti-Dumping Agreement on the basis that China did not require interested parties providing confidential information to furnish non-confidential summaries in sufficient detail to permit a reasonable understanding of the substance of the following information submitted in confidence:
 - (i) information pertaining to the models covered in the Application; and
 - (ii) the information contained in Nucotech's replies to questions 17, 19, 19(1), 19(2), 32, 33 and 38(5) of MOFCOM's questionnaire and Attachments 4 and 15 to those replies;
- (f) Article 6.5.1. of the Anti-Dumping Agreement on the basis that China did not require an interested party to explain why certain information submitted in confidence could not be summarized;
- (g) Article 6.9 of the Anti-Dumping Agreement on the basis that China did not inform interested parties of the following essential facts under consideration forming the basis for the decision to apply definitive measures:
 - (i) the AUVs and underlying price data used to analyse the price effects of dumped imports;
 - (ii) the price and adjustment data underlying Smiths' margin of dumping; and
 - (iii) the facts that formed the basis for the determination that the residual duty rate should be 71.8%;
- (h) Article 12.2.2 of the Anti-Dumping Agreement, first sentence, on the basis that MOFCOM's public notice was deficient in failing to provide relevant information regarding:
 - (i) its price effects analysis; and
 - (ii) the factual basis for the determination of the residual rate;
- (i) Article 12.2.2 of the Anti-Dumping Agreement, second sentence, on the basis that MOFCOM's public notice was deficient in failing to explain why MOFCOM rejected Smiths' arguments regarding the treatment of domestic sales to affiliated distributors.

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

- (a) Articles 3.1 and 3.4 of the Anti-Dumping Agreement by failing to base its examination of the factors having a bearing on the state of the industry on positive evidence;
- (b) Articles 3.1 and 3.5 of the Anti-Dumping Agreement in connection with MOFCOM's treatment in its non-attribution analysis of the effect of exports, the impact of the global financial crisis and Nucotech's alleged start-up situation;
- (c) Article 6.5.1 of the Anti-Dumping Agreement in connection with the non-confidential summaries of the confidential information set forth in Attachments 14, 16, 17, 18 and 19 to Nucotech's questionnaire response;
- (d) Article 6.9 of the Anti-Dumping Agreement in connection with informing interested parties of:
 - (i) the underlying facts and criteria on the basis of which the affiliated distributor adjustment to export price was made;
 - (ii) the calculations of Smiths' margin of dumping; and
 - (iii) the facts forming the basis of the decision to apply facts available in relation to the residual duty rate;
- (e) Article 12.2.2 of the Anti-Dumping Agreement, first sentence, by failing to include in the public notice:
 - (i) the calculations and underlying data for Smiths' margin of dumping; and
 - (ii) the calculation of the residual duty rate;
- (f) Article 12.2.2 of the Anti-Dumping Agreement, second sentence, in connection with:
 - (i) Smiths' arguments on the credibility of certain injury data; and
 - (ii) additional arguments allegedly made by Smiths concerning MOFCOM's injury and causation analysis;

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 European Union's claims under:

- (a) Articles 3.1 and 3.4 of the Anti-Dumping Agreement in relation to whether MOFCOM should have taken into account the differences between "high-energy" and "low-energy" scanners;
- (b) Articles 3.1 and 3.5 of the Anti-Dumping Agreement in relation to MOFCOM's analysis of the volume of dumped imports;
- (c) Article 6.2 of the Anti-Dumping Agreement; and
- (d) Article 6.4 of the Anti-Dumping Agreement.

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 Anti-Dumping Agreement, we conclude that it has nullified or impaired benefits accruing to the European Union under that Agreement.

8.5 Pursuant to Article 19.1 of the DSU, having found China acted inconsistently with certain provisions of the Anti-Dumping Agreement, we recommend China bring its measure into conformity with its obligations under that Agreement.
