

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- i. China acted inconsistently with the requirements of Article 6.2 of the Anti-Dumping Agreement due to MOFCOM's failure to provide opportunities for interested parties with adverse interests to meet and present opposing views and offer rebuttal arguments, there being no evidence on record that other interested parties with interests adverse to those of the United States Government declined to attend the meeting.
- ii. China acted inconsistently with Articles 6.5.1 of the Anti-Dumping Agreement and 12.4.1 of the SCM Agreement due to MOFCOM's failure to require the Petitioner to provide adequate non-confidential summaries of information that it submitted in confidence.
- iii. China acted inconsistently with Article 6.9 of the Anti-dumping Agreement as MOFCOM did not disclose all of the essential facts, in particular those pertaining to its determination of the existence and margins of dumping to the three relevant interested parties: Pilgrim's Pride, Tyson, and Keystone.
- iv. China acted inconsistently with the first sentence of Article 2.2.1.1 of the Anti-dumping Agreement when MOFCOM declined to use Tyson and Keystone's books and records in calculating the cost of production for determining normal value. With respect to Pilgrim's Pride, the United States has not established that China acted inconsistently with the first sentence of Article 2.2.1.1.
- v. China acted inconsistently with the second sentence of Article 2.2.1.1 because: (i) there was insufficient evidence of its consideration of the alternative allocation methodologies presented by the respondents; (ii) MOFCOM improperly allocated all processing costs to all products; and (iii) MOFCOM allocated Tyson's costs to produce non-exported products to the normal value of the products for which MOFCOM was calculating a dumping margin.
- vi. The United States' claim under Article 2.4 of the Anti-Dumping Agreement is outside the Panel's terms of reference.
- vii. China acted inconsistently with Article 6.8 of the Anti-Dumping Agreement due to MOFCOM's application of an "all others" rate determined on the basis of facts available to US producers/exporters who failed to register in the anti-dumping duty investigation.
- viii. China acted inconsistently with Article 6.9 of the Anti-Dumping Agreement due to MOFCOM's failure to disclose certain "essential facts" forming the basis of its determination of the "all others" anti-dumping rate.
- ix. China acted inconsistently with Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement because MOFCOM failed to disclose "in sufficient detail the findings and conclusions reached on all issues of fact and law considered material" or "all relevant information on matters of fact" with respect to its calculation of the "all others" anti-dumping rate in the Final Anti-Dumping Determination. The Panel does not rule on the corresponding claims of the United States with respect to the Preliminary Determination.
- x. China acted inconsistently with Article 12.7 of the SCM Agreement due to MOFCOM's application of an "all others" rate determined on the basis of facts available to US producers/exporters who failed to register in the countervailing duty investigation.
- xi. China acted inconsistently with Article 12.8 of the SCM Agreement due to MOFCOM's failure to disclose certain "essential facts" underlying its decision to apply an "all others" countervailing duty rate.

- xii. China acted inconsistently with Articles 22.3 and 22.5 of the SCM Agreement, because MOFCOM failed to disclose "in sufficient detail the findings and conclusions reached on all issues of fact and law considered material" or "all relevant information on matters of fact" with respect to its calculation of the "all others" countervailing duty rate in the Final Countervailing Duty Determination. The Panel does not rule on the corresponding claims of the United States with respect to the Preliminary Determination.
- xiii. China acted inconsistently with Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994, because MOFCOM did not ensure that the countervailing duty levied did not exceed the amount of the subsidization per unit of the subsidized and exported product.
- xiv. The United States has not established that China acted inconsistently with Articles 3.1 and 4.1 of the Anti-Dumping Agreement and Articles 15.1 and 16.1 of the SCM Agreement given that MOFCOM was not obligated to attempt to seek out and identify all domestic producers in the process of defining the domestic industry. Furthermore, the United States has not established that China effectively excluded domestic producers from consideration as part of the domestic industry creating a self-selection bias which gave rise to a material risk of distortion of the injury analysis.
- xv. China acted inconsistently with Articles 3.1 and 3.2 of the Anti-Dumping Agreement and with Articles 15.1 and 15.2 of the SCM Agreement because MOFCOM relied for its findings of price undercutting on a comparison of subject import and domestic average unit values that included a different product mix, without taking any steps to control for differences in physical characteristics affecting price comparability or make necessary adjustments; and because MOFCOM's findings of price suppression in each investigation relied on its findings of price undercutting. The United States has not established that China acted inconsistently with the same provisions because MOFCOM relied for its findings of price undercutting on a comparison of subject import and domestic average unit values at different levels of trade.
- xvi. The United States' claims under Article 12.2.2 of the Anti-Dumping Agreement and Article 22.5 of the SCM Agreement concerning the United States Government's level of trade argument fall within our terms of reference; and China acted inconsistently with these provisions due to MOFCOM's failure to disclose, in the public notice of its Final Determinations, its reasons for the rejection of this argument.
- xvii. The Panel does not rule on the United States' claims that China acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement and Articles 15.1 and 15.4 of the SCM Agreement because MOFCOM's findings that subject imports had an adverse impact on the domestic industry were not based on an objective examination of all relevant economic factors and indices having a bearing on the state of the industry.
- xviii. The Panel does not rule on the United States' claims that China acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement and Articles 15.1 and 15.5 of the SCM Agreement.
- xix. The United States has not established that China acted inconsistently with Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement and 22.3 and 22.5 of the SCM Agreement with respect to the explanations provided by MOFCOM in the public notice of its Final Anti-Dumping and Countervailing Duty Determinations for its rejection of US interested parties' arguments that any market share gained by subject imports was not to the detriment of the domestic industry.
- xx. China acted inconsistently with Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement and 22.3 and 22.5 of the SCM Agreement due to MOFCOM's failure to provide, in the public notice of its Final Anti-Dumping and Countervailing Duty Determinations, the reasons for its rejection of US interested parties' argument that

subject imports could not have had an adverse impact on the domestic industry because over 40% of subject imports consisted of chicken paws, which Chinese domestic producers were incapable of supplying in adequate quantities.

xxi. China acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article 10 of the SCM Agreement as a consequence of the foregoing violations of these Agreements.

8.2. 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. We conclude that, to the extent that the measures at issue are inconsistent with the Anti-Dumping Agreement and the SCM Agreement, they have nullified or impaired benefits accruing to the United States under these agreements.

8.3. Pursuant to Article 19.1 of the DSU, we recommend that China bring its measures into conformity with its obligations under the Anti-Dumping Agreement and the SCM Agreement.
