

7.508. The USDOC assigned a so-called "all others" rate to exporters that passed the Separate Rate Test but were not individually examined in 25 of the challenged determinations.<sup>1002</sup> The PRC-wide rate, assigned to the PRC-wide entity by the USDOC in these 25 determinations, was higher than the "all others" rate in the same determination.<sup>1003</sup>

## 8 CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, we conclude as follows:

- a. With respect to the USDOC's use of the WA-T methodology in the *OCTG*, *Coated Paper* and *Steel Cylinders* investigations:
  - i. The United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in the *OCTG* and *Coated Paper* investigations because of the fourth quantitative flaw with the Nails test which led the USDOC to disregard non-target prices below the alleged target price under the price gap test and because of the first SAS programming error that occurred in the application of the price gap test;
  - ii. The United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in the *OCTG*, *Coated Paper* and *Steel Cylinders* investigations because of the USDOC's explanations which were premised on the use of the WA-T methodology with zeroing and because of its failure to provide an explanation as to why the T-T

*Flooring* OI, Final Determination, (Exhibit CHN-49), pp. 64323-64324; and *Furniture* AR7: compare *Furniture* AR7, Final Results, (Exhibit CHN-59), p. 35250 with *Furniture* OI, Notice of Amended Final Determination, (Exhibit CHN-288), pp. 67100-67102, *Furniture* AR1, Amended Final Results, (Exhibit CHN-290), p. 46964, *Furniture* AR2, Final Results, (Exhibit CHN-291), pp. 49166-49167, *Furniture* AR3, Notice of Amended Final Results, (Exhibit CHN-509), pp. 68410-68411, *Furniture* AR4, Notice of Amended Final Results, (Exhibit CHN-510), p. 4871, and *Furniture* AR5, Final Results, (Exhibit CHN-294), pp. 49733-49734.

<sup>1002</sup> *Aluminum* OI, Final Determination, (Exhibit CHN-32), pp. 18530-18531; *Aluminum* AR1, Final Results, (Exhibit CHN-35), p. 100; *Aluminum* AR2, Final Results, (Exhibit CHN-36), pp. 78786-78787; *Coated Paper* OI, Amended Final Determination, (Exhibit CHN-34), p. 70204; *Shrimp* OI, Notice of Amended Final Determination, (Exhibit CHN-216), p. 5151, and Amended Final Determination, (Exhibit CHN-221), p. 13039; *OTR Tires* OI, Notice of Amended Final Determination, (Exhibit CHN-231), pp. 51626-51627; *OTR Tires* AR5, Amended Final Results, (Exhibit CHN-482), p. 26231; *OCTG* OI, Amended Final Determination, (Exhibit CHN-237), pp. 28551-28552; *Solar* OI, Amended Final Determination, (Exhibit CHN-242), pp. 73020-73021; *Solar* AR1, Final Results, (Exhibit CHN-489), pp. 41001-41002; *Diamond Sawblades* OI, Final Determination, (Exhibit CHN-45), p. 29309; *Diamond Sawblades* AR1, Final Results, (Exhibit CHN-46), p. 11145; *Diamond Sawblades* AR2, Final Results, (Exhibit CHN-47), p. 36167, and Amended Final Results, (Exhibit CHN-253), p. 42931; *Diamond Sawblades* AR3, Final Results, (Exhibit CHN-48), p. 35724; *Diamond Sawblades* AR4, Final Results, (Exhibit CHN-485), pp. 32344-32345; *Steel Cylinders* OI, Final Determination, (Exhibit CHN-14), p. 26742; *Wood Flooring* OI, Amended Final Determination, (Exhibit CHN-150), pp. 76692-76693, and Notice of Amended Final Determination, (Exhibit CHN-258), p. 25110; *Wood Flooring* AR1, Amended Final Results, (Exhibit CHN-464), p. 35316; *Wood Flooring* AR2, Final Results, (Exhibit CHN-490), pp. 41477-41478; *Ribbons* OI, Final Determination, (Exhibit CHN-33), p. 41812; *Ribbons* AR1, Final Results, (Exhibit CHN-51), p. 10133; *Bags* OI, Notice of Amended Final Determination, (Exhibit CHN-306), p. 42420; *PET Film* OI, Final Determination, (Exhibit CHN-56), p. 55041; *Furniture* OI, Notice of Amended Final Determination, (Exhibit CHN-288), pp. 67100-67102; and *Furniture* AR7, Final Results, (Exhibit CHN-59), p. 35250.

<sup>1003</sup> *Aluminum* OI, Final Determination, (Exhibit CHN-32), pp. 18530-18531; *Aluminum* AR1, Final Results, (Exhibit CHN-35), p. 100; *Aluminum* AR2, Final Results, (Exhibit CHN-36), pp. 78786-78787; *Coated Paper* OI, Amended Final Determination, (Exhibit CHN-34), p. 70204; *Shrimp* OI, Notice of Amended Final Determination, (Exhibit CHN-216), p. 5151, and Amended Final Determination, (Exhibit CHN-221), p. 13039; *OTR Tires* OI, Notice of Amended Final Determination, (Exhibit CHN-231), pp. 51626-51627; *OTR Tires* AR5, Amended Final Results, (Exhibit CHN-482), p. 26231; *OCTG* OI, Amended Final Determination, (Exhibit CHN-237), pp. 28551-28552; *Solar* OI, Amended Final Determination, (Exhibit CHN-242), pp. 73020-73021; *Solar* AR1, Final Results, (Exhibit CHN-489), pp. 41001-41002; *Diamond Sawblades* OI, Final Determination, (Exhibit CHN-45), p. 29309; *Diamond Sawblades* AR1, Final Results, (Exhibit CHN-46), p. 11145; *Diamond Sawblades* AR2, Final Results, (Exhibit CHN-47), p. 36167, and Amended Final Results, (Exhibit CHN-253), p. 42931; *Diamond Sawblades* AR3, Final Results, (Exhibit CHN-48), p. 35724; *Diamond Sawblades* AR4, Final Results, (Exhibit CHN-485), pp. 32344-32345; *Steel Cylinders* OI, Final Determination, (Exhibit CHN-14), p. 26742; *Wood Flooring* OI, Amended Final Determination, (Exhibit CHN-150), pp. 76692-76693, and Notice of Amended Final Determination, (Exhibit CHN-258), p. 25110; *Wood Flooring* AR1, Amended Final Results, (Exhibit CHN-464), p. 35316; *Wood Flooring* AR2, Final Results, (Exhibit CHN-490), pp. 41477-41478; *Ribbons* OI, Final Determination, (Exhibit CHN-33), p. 41812; *Ribbons* AR1, Final Results, (Exhibit CHN-51), p. 10133; *Bags* OI, Notice of Amended Final Determination, (Exhibit CHN-306), p. 42420; *PET Film* OI, Final Determination, (Exhibit CHN-56), p. 55041; *Furniture* OI, Notice of Amended Final Determination, (Exhibit CHN-288), pp. 67100-67102; and *Furniture* AR7, Final Results, (Exhibit CHN-59), p. 35250.

methodology could not take into account appropriately the significant differences in the relevant export prices;

- iii. The United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in the *OCTG*, *Coated Paper* and *Steel Cylinders* investigations by applying the WA-T methodology to all export transactions;
  - iv. The United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in the *OCTG*, *Coated Paper* and *Steel Cylinders* investigations because of the use of zeroing in the dumping margin calculations made through the WA-T methodology;
  - v. China has not established that the United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in the *Steel Cylinders* investigation by reason of the fourth quantitative flaw with the Nails test which allegedly led the USDOC to disregard non-target prices below the alleged target price under the price gap test;
  - vi. China has not established that the United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in the *OCTG*, *Coated Paper* and *Steel Cylinders* investigations by reason of the first, second and third alleged quantitative flaws with the Nails test;
  - vii. China has not established that the United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement by reason of the second alleged SAS programming error that occurred in the application of the price gap test in the *OCTG* and *Coated Paper* investigations;
  - viii. China has not established that the United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in the *OCTG*, *Coated Paper* and *Steel Cylinders* investigations because of the alleged qualitative issues with the Nails test; and
  - ix. China has not established that the United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in the *OCTG*, *Coated Paper* and *Steel Cylinders* investigations by finding the relevant pattern on the basis of purchaser or time period averages as opposed to individual export transaction prices.
- b. With respect to the USDOC's use of zeroing in the third administrative review in *PET Film*:
- i. The United States acted inconsistently with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 because of the use of zeroing in the dumping margin calculations made through the WA-T methodology.
- c. With respect to the Single Rate Presumption:
- i. The six administrative review determinations introduced at the Panel's first substantive meeting with the parties are within the Panel's terms of reference;
  - ii. The Single Rate Presumption constitutes a measure of general and prospective application, which is, as such, inconsistent with Articles 6.10 and 9.2 of the Anti-Dumping Agreement;
  - iii. The United States acted inconsistently with Articles 6.10 and 9.2 of the Anti-Dumping Agreement as a result of the application of the Single Rate Presumption in the 38 determinations challenged by China under these provisions; and
  - iv. In light of the findings set out in paragraphs 8.1c.ii and 8.1c.iii, we make no findings, based on judicial economy, with respect to China's as such and as applied claims under the second sentence of Article 9.4 of the Anti-Dumping Agreement concerning the Single Rate Presumption.

- d. With respect to China's claims under Articles 6.1 and 6.8, paragraphs 1 and 7 of Annex II, and the first sentence of Article 9.4 of the Anti-Dumping Agreement:
  - i. The four of the six administrative review determinations introduced at the Panel's first substantive meeting with the parties, which are relevant to these claims, are within the Panel's terms of reference;
  - ii. China has not demonstrated that the alleged AFA Norm constitutes a norm of general and prospective application and there is therefore no need to examine whether that Norm falls within the Panel's terms of reference nor to address China's as such claims under Article 6.8 of the Anti-Dumping Agreement and paragraph 7 of its Annex II against that Norm; and
  - iii. In light of the findings set out in paragraph 8.1c.iii, we make no findings, based on judicial economy, with respect to China's as applied claims under Articles 6.1 and 6.8, paragraphs 1 and 7 of Annex II, and the first sentence of Article 9.4 of the Anti-Dumping Agreement concerning the 30 determinations challenged by China under these provisions.

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. Thus, we conclude that, to the extent that the measures at issue are inconsistent with the Anti-Dumping Agreement and the GATT 1994, they have nullified or impaired benefits accruing to China under those Agreements. On this basis, pursuant to Article 19.1 of the DSU, we recommend that the United States bring its measures into conformity with its obligations under the Anti-Dumping Agreement and the GATT 1994.

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