

7.223. We observe that these are consequential claims. They are therefore addressed in light of the Panel's evaluation of the claims on which they depend. In respect of the final dumping and injury determinations, we found above that subsection 2(1), section 30.1 and subsections 35(1), 35(2), 38(1), 41(1), 42(1), 42(6), and 43(1) of SIMA and subsection 37.1(1) of SIMR are "as such" inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.7, 5.8, and 9.2 of the Anti-Dumping Agreement. As a result, we also uphold Chinese Taipei's corresponding consequential claims under Article XVI:4 of the Marrakesh Agreement and Article 18.4 of the Anti-Dumping Agreement as well as under Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994. In relation to the preliminary dumping and injury determinations, we rejected above Chinese Taipei's "as such" claims under Articles 3.1, 3.2, 3.4, 3.5, 3.7, 7.1(ii), and 7.5 of the Anti-Dumping Agreement concerning subsection 2(1), section 30.1 and subsections 35(1), 35(2), 38(1), 41(1), 42(1), 42(6), and 43(1) of SIMA and subsection 37.1(1) of SIMR. To the same extent, we therefore also reject Chinese Taipei's consequential claims under Article XVI:4 of the Marrakesh Agreement and Article 18.4 of the Anti-Dumping Agreement as well as under Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

8 CONCLUSIONS AND RECOMMENDATION

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

- a. Canada acted inconsistently with the second sentence of Article 5.8 of the Anti-Dumping Agreement by failing to immediately terminate the investigation in respect of exporters from Chinese Taipei with final *de minimis* margins of dumping;
- b. Chinese Taipei failed to establish that Canada acted inconsistently with Article 6.10 of the Anti-Dumping Agreement by failing to determine only one individual margin of dumping for each exporter from Chinese Taipei with a *de minimis* margin of dumping when basing the *de minimis*-test on a country-wide margin of dumping;
- c. Chinese Taipei failed to establish that Canada acted inconsistently with Article 7.1(ii) of the Anti-Dumping Agreement by applying provisional anti-dumping measures in respect of imports from a Chinese Taipei exporter with a preliminary *de minimis* margin of dumping;
- d. Canada acted inconsistently with Article 9.2 of the Anti-Dumping Agreement by imposing definitive anti-dumping duties on imports from Chinese Taipei exporters with final *de minimis* margins of dumping;
- e. Chinese Taipei failed to establish that Canada acted inconsistently with Article 7.5 of the Anti-Dumping Agreement by imposing provisional anti-dumping duties on imports from Chinese Taipei exporters with preliminary *de minimis* margins of dumping;
- f. Canada acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994, to the extent that Canada imposed definitive anti-dumping duties on imports from Chinese Taipei exporters with final *de minimis* margins of dumping. Chinese Taipei failed to establish that Canada acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994, to the extent that Canada imposed provisional anti-dumping duties on imports from Chinese Taipei exporters with preliminary *de minimis* margins of dumping;
- g. Canada acted inconsistently with Articles 3.1, 3.2, 3.4, 3.5, and 3.7 of the Anti-Dumping Agreement by treating imports from two Chinese Taipei exporters with final *de minimis* margins of dumping as "dumped imports" in the analysis and final determinations of injury and causation;
- h. Chinese Taipei failed to establish that Canada acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement by failing to undertake a non-attribution analysis in respect of the effect of subsidization for imports from India and the effect of overcapacity in the domestic industry;

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- i. Canada acted inconsistently with Article 6.8 of the Anti-Dumping Agreement, and its Annex II, paragraph 7, by establishing the dumping margin and duty rate for "all other exporters" on the basis of the highest amount by which the normal value exceeded the export price on an individual transaction for a cooperative producer from any country subject to the investigation;
 - j. Canada acted inconsistently with Article 9.3 of the Anti-Dumping Agreement by imposing anti-dumping duties on new product models or types from investigated and cooperative exporters from Chinese Taipei that exceeded their margins of dumping as established under Article 2 of the Anti-Dumping Agreement;
 - k. Canada acted inconsistently with Article 6.8 of the Anti-Dumping Agreement, and its Annex II, by using facts available to determine the amount of anti-dumping duty imposed or collected on imports of new product models or types from investigated and cooperative exporters from Chinese Taipei;
 - l. Canada acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994, to the extent that Canada has been found to violate Articles 3.1, 3.2, 3.4, 3.5, 3.7, 5.8, 6.8, 9.2, and 9.3 of the Anti-Dumping Agreement, and its Annex II (including its paragraph 7). Chinese Taipei failed to establish that Canada acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994, to the extent that Chinese Taipei's claims under Articles 3.1, 3.5, 6.10, 7.1(ii), and 7.5 of the Anti-Dumping Agreement have been rejected;
 - m. subsection 41(1) of SIMA, read together with section 30.1 and subsection 2(1) of SIMA, is inconsistent "as such" with the second sentence of Article 5.8 of the Anti-Dumping Agreement because it bases the *de minimis*-test for the final dumping determination on a country-wide, rather than an exporter-specific margin of dumping;
 - n. Chinese Taipei failed to establish that section 38(1) of SIMA, read together with subsection 2(1), section 30.1 and subsections 35(1) and 35(2) of SIMA, is inconsistent "as such" with Article 7.1(ii) of the Anti-Dumping Agreement because it requires an affirmative preliminary dumping determination to be made for exporters with *de minimis* margins of dumping when the country-wide margin of dumping is more than *de minimis*;
 - o. subsection 2(1), section 30.1 and subsections 35(1), 35(2), 38(1), and 41(1) of SIMA are inconsistent "as such" with Article 9.2 of the Anti-Dumping Agreement, to the extent that these provisions of SIMA result in the imposition of definitive anti-dumping duties on imports from exporters with final *de minimis* margins of dumping;
 - p. Chinese Taipei failed to establish that subsection 2(1), section 30.1 and subsections 35(1), 35(2), 38(1), and 41(1) of SIMA are inconsistent "as such" with Article 7.5 of the Anti-Dumping Agreement, to the extent that these provisions of SIMA result in the imposition of provisional anti-dumping duties on imports from exporters with preliminary *de minimis* margins of dumping;
 - q. subsection 2(1), section 30.1 and subsections 35(1), 35(2), 38(1), and 41(1) of SIMA are inconsistent "as such" with Article 1 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994, to the extent that these provisions of SIMA have been found to be inconsistent "as such" with Articles 5.8 and 9.2 of the Anti-Dumping Agreement. Chinese Taipei failed to establish that subsection 2(1), section 30.1 and subsections 35(1), 35(2), 38(1), and 41(1) of SIMA are inconsistent "as such" with Article 1 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994, to the extent that these provisions of SIMA have not been found to be inconsistent "as such" with Articles 7.1(ii) and 7.5 of the Anti-Dumping Agreement;
 - r. subsections 42(1), 42(6), and 43(1) of SIMA and subsection 37.1(1) of SIMR are inconsistent "as such" with Articles 3.1, 3.2, 3.4, 3.5 and 3.7 of the Anti-Dumping Agreement, to the extent that these provisions of SIMA and SIMR result in the treatment of imports from exporters with final *de minimis* margins of dumping as "dumped imports" in the final determinations of injury and causation. Chinese Taipei

failed to establish that subsections 42(1), 42(6), and 43(1) of SIMA and subsection 37.1(1) of SIMR are inconsistent "as such" with Articles 3.1, 3.2, 3.4, 3.5, and 3.7 of the Anti-Dumping Agreement, to the extent that these provisions of SIMA and SIMR result in the treatment of imports from exporters with preliminary *de minimis* margins of dumping as "dumped imports" in the preliminary determinations of injury and causation; and

- s. subsection 2(1), section 30.1 and subsections 35(1), 35(2), 38(1), 41(1), 42(1), 42(6), and 43(1) of SIMA and subsection 37.1(1) of SIMR are inconsistent "as such" with Article XVI:4 of the Marrakesh Agreement and Article 18.4 of the Anti-Dumping Agreement as well as with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994, to the extent that these provisions of SIMA and SIMR have been found to be inconsistent "as such" with Articles 3.1, 3.2, 3.4, 3.5, 3.7, 5.8, and 9.2 of the Anti-Dumping Agreement, namely in relation to the final determinations of dumping and injury. To the extent that these provisions of SIMA and SIMR have not been found to be inconsistent "as such" with Articles 3.1, 3.2, 3.4, 3.5, 3.7, 7.1(ii), and 7.5 of the Anti-Dumping Agreement, namely in relation to the preliminary determinations of dumping and injury, Chinese Taipei failed to establish that they are inconsistent "as such" with Article XVI:4 of the Marrakesh Agreement and Article 18.4 of the Anti-Dumping Agreement as well as with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

8.2. We do not consider it necessary to address Chinese Taipei's claims under Articles 2.2 and 6.10 of the Anti-Dumping Agreement concerning the determination of the amount of anti-dumping duties imposed or collected on imports of new product models or types from investigated and cooperative exporters from Chinese Taipei.

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. We conclude that, to the extent that the measures at issue are inconsistent with certain provisions of the Anti-Dumping Agreement, the GATT 1994 and the Marrakesh Agreement, they have nullified or impaired benefits accruing to Chinese Taipei under those agreements.

8.4. Pursuant to Article 19.1 of the DSU, we recommend that Canada bring its measures into conformity with its obligations under the above-mentioned Agreements.
