
conformity with the *chapeau* of measures that they have found not to be provisionally justified under various subparagraphs of Article XX.⁴⁷⁷

7.242. In light of its conclusion that the United States has not adequately explained how the measures chosen by it are necessary to protect public morals, the United States has not met its burden of demonstrating that the measures are provisionally justified under Article XX(a). The Panel, therefore, does not consider it necessary to make findings on whether the United States has demonstrated that its measures satisfy the requirements of the *chapeau* of Article XX.

8 CONCLUSIONS AND RECOMMENDATION(S)

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

- a. the parties have not reached a mutually satisfactory solution within the meaning of Article 12.7 of the DSU, or otherwise relinquished their rights to pursue WTO dispute settlement action on the measures at issue in this dispute;
- b. all measures challenged by China fall within the Panel's terms of reference, and it is appropriate for the Panel to make findings and recommendations with respect to the first measure as identified in China's panel request (additional duties of 25% on List 1 products), and the second measure as amended on 9 May 2019 (additional duties of 25% on List 2 products);
- c. the challenged measures are *prima facie* inconsistent with Articles I:1, II:1(a) and II:1(b) of the GATT 1994; and
- d. the United States has not met its burden of demonstrating that the measures are provisionally justified under Article XX(a) of the GATT 1994.

8.2. As a consequence, the Panel concludes that the measures at issue are inconsistent with Articles I:1, II:1(a) and II:1(b) of the GATT 1994.

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. The Panel concludes that, to the extent that the measures at issue are inconsistent with certain provisions of the GATT 1994, they have nullified or impaired benefits accruing to China under that agreement within the meaning of Article XXIII:1(a) of the GATT 1994.

8.4. Pursuant to Article 19.1 of the DSU, the Panel recommends that the United States bring its measures into conformity with its obligations under the GATT 1994.

9 CONCLUDING COMMENTS

9.1. In conclusion, the Panel wishes to make some additional observations:

9.2. The Panel is very much aware of the wider context in which the WTO system currently operates, which is one reflecting a range of unprecedented global trade tensions.

9.3. At the same time, it is not the role of this Panel to draw any legal conclusions or make recommendations on any matters other than those it has been specifically tasked to deal with through these dispute settlement proceedings. In this connection, the Panel recalls that the Government of the United States has not, up to the present time, initiated action under the WTO Dispute Settlement Understanding with respect to any measures China has imposed in response to the United States' measures at issue in this dispute.⁴⁷⁸

⁴⁷⁷ See e.g. Panel Reports, *India – Solar Cells*, paras. 7.389-7.390; *China – Audiovisual Products*, para. 7.912; and *Colombia – Ports of Entry*, para. 7.620. See also Appellate Body Reports, *India – Solar Cells*, para. 5.155; and *China – Audiovisual Products*, fn 614.

⁴⁷⁸ Para. 7.4 of the Panel Report refers.

9.4. The Panel emphasizes that pursuant to the requirements of Article 11 of the DSU, it has sought to perform diligently its adjudicatory role in relation to the matters that fall within the terms of reference of these dispute settlement proceedings. Additionally, the Panel notes that the panel process is structured in such a way that time is available for the parties to take stock as proceedings evolve and further consider opportunities for mutually agreed and satisfactory solutions.⁴⁷⁹

9.5. Accordingly, recalling Article 3.7 of the DSU that highlights that the aim of the dispute settlement system is to achieve a positive solution to a dispute, the Panel expresses its ongoing encouragement to the parties to pursue further efforts to achieve a mutually satisfactory solution to the matters that have been raised before it in this dispute.

⁴⁷⁹ The last sentence of Article 11 of the DSU refers.