

**X. Findings and Conclusion**

624. For the reasons set out in this Report, the Appellate Body:

(a)

*WTO Agreement* and Article 18.4 of the *Anti-Dumping Agreement* by failing to ensure the conformity of its laws, regulations, and administrative procedures with its obligations under the relevant agreements;

- (vii) upholds the Panel's finding, in paragraph 7.148 of the Panel Report<sup>935</sup>, that Article 9(5) of the Basic AD Regulation is inconsistent with Articles 6.10 and 9.2 of the *Anti-Dumping Agreement* "as applied" in the fasteners investigation;
- (b) with respect to the Panel's findings under Articles 4.1 and 3.1 of the *Anti-Dumping Agreement*<sup>936</sup>:
  - (i) finds that the Panel erred in finding, in paragraph 7.230 of the Panel Report, that "the European Union did not act inconsistently with Article 4.1 of the [*Anti-Dumping Agreement*] in defining a domestic industry comprising producers accounting for 27 per cent of total estimated EU production of fasteners" on the basis that the collective output of these producers represented "a major proportion" of the total domestic production;
  - (ii) finds that the Panel did not err in finding, in paragraph 7.241 of the Panel Report, that China failed to establish that the European Union acted inconsistently with Article 3.1 of the *Anti-Dumping Agreement* in the selection of a sample of the domestic industry for purposes of making an injury determination; and
  - (iii) finds that the Panel did not err in its interpretation or application of Articles 4.1 and 3.1 of the *Anti-Dumping Agreement*, or acted inconsistently with Article 11 of the DSU and Article 17.6 of the *Anti-Dumping Agreement*, when finding, in paragraph 7.219 of the Panel Report, that "the mere fact that the domestic industry as ultimately defined does not include any particular proportion of producers expressing different views with respect to the complaint, or producers who did not come forward within the 15 day period, does not demonstrate that the European Union acted inconsistently with Article 4.1 of the [*Anti-Dumping Agreement*] in defining the domestic industry" or acted inconsistently with Art

- (c) with respect to the Panel's findings regarding certain aspects of the dumping determination in the fasteners investigation:
  - (i) finds that the Panel did not err in finding, in paragraph 7.494 of the Panel Report<sup>937</sup>, that the European Union violated Article 6.4 of the *Anti-Dumping Agreement* "by not providing a timely opportunity for Chinese producers to see information regarding the product types on the basis of which normal

- (vi) finds that the Panel did not act inconsistently with Article 11 of the DSU, when finding, in paragraph 7.302 of the Panel Report, that there is no inherent reason to conclude that every element of the PCN necessarily reflects a difference that affects price comparability; and
  - (vii) finds that the Panel did not err in its interpretation and application of Article 2.4 of the *Anti-Dumping Agreement* in finding, in paragraph 7.311 of the Panel Report, that the European Union did not have to make adjustments for alleged quality differences;
- (d) with respect to Articles 6.5 and 6.5.1 of the *Anti-Dumping Agreement*:
- (i) upholds the Panel's findings, in paragraphs 7.516 and 7.517 of the Panel Report<sup>939</sup>, that the European Union failed to ensure that the domestic producers, Agrati and Fontana Luigi, provide appropriate statements of the reasons why information provided in confidence was not susceptible of summary;
  - (ii) finds that China's claim under Article 6.5 that the European Union failed to establish that "good cause" existed to support the confidential treatment of information submitted by the analogue country producer participating in the investigation, Pooja Forge, was within the Panel's terms of reference; but finds that China failed to substantiate this claim; and therefore
  - (iii) reverses the Panel's finding, in paragraph 7.525 of the Panel Report<sup>940</sup>, that the European Union acted inconsistently with its obligations under Article 6.5 with respect to the treatment of confidential information submitted by Pooja Forge; and
  - (iv) upholds the Panel's finding, in paragraph 7.455 of the Panel Report<sup>941</sup>, that the European Union did not act inconsistently with its obligations under Article 6.5 when the Commission granted the request to treat the identity of the complainants and the supporters of the complaint as confidential; and

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<sup>939</sup>See also Panel Report, para. 8.2(f).

<sup>940</sup>See also Panel Report, para. 8.2(f).

<sup>941</sup>See also Panel Report, para. 8.3(h).



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Shotaro Oshima  
Presiding Member

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