

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 The Panel issues its findings in the form of a single document containing three separate Reports with common sections on the Panel's findings and separate sections on the Panel's conclusions and recommendations for each complaining party. The Panel's findings incorporate the conclusions of its preliminary rulings, attached to these Reports as Annex F.

A. COMPLAINT BY THE UNITED STATES (DS394)

1. Conclusions

8.2 In respect of claims concerning export duties:¹⁵⁵⁴

- (a) The Panel finds that the application of export duties to certain forms of bauxite, coke, fluorspar, magnesium, manganese, silicon metal and zinc, by virtue of the series of measures at issue¹⁵⁵⁵, is inconsistent with Paragraph 11.3 of China's Accession Protocol;
- (b) The Panel finds that China may not seek to justify the application of export duties to forms of fluorspar pursuant to Article XX(g) of the GATT 1994. Even assuming *arguendo* that China could seek to justify the application of export duties, the Panel finds that China has not demonstrated that the application of export duties to forms of fluorspar is justified pursuant to Article XX(g) of the GATT 1994;
- (c) The Panel finds that China may not seek to justify the application of export duties to forms of magnesium, manganese and zinc pursuant to Article XX(b) of the GATT 1994. Even assuming *arguendo* that China could seek to justify the application of export duties, the Panel finds that China has not demonstrated that the application of export duties to forms of magnesium, manganese and zinc is justified pursuant to Article XX(b) of the GATT 1994; and
- (d) The Panel concludes that the *Adjustment of Export Tariffs Circular* removed the WTO-inconsistent special duty applicable to yellow phosphorus before the Panel's establishment on 21 December 2009. Therefore, the Panel makes no findings on the *2009 Tariff Implementation Program* that applied a special duty rate to yellow phosphorus prior to 1 July 2009.

8.3 In respect of claims concerning export quotas:¹⁵⁵⁶

- (a) The Panel finds that the application of export quotas to certain forms of bauxite, coke, fluorspar and silicon carbide, by virtue of the series of measures at issue¹⁵⁵⁷, is inconsistent with Article XI:1 of the GATT 1994;
- (b) The Panel finds that the application of an export ban on certain forms of zinc, by virtue of the series measures at issue¹⁵⁵⁸, is inconsistent with Article XI:1 of the GATT 1994;
- (c) The Panel finds that China has not demonstrated that the application of an export quota to refractory-grade bauxite, classifiable under HS No. 2508.3000, is justified pursuant to Articles XI:2(a) or XX(g) of the GATT 1994;
- (d) The Panel finds that China has not demonstrated that the application of export quotas to coke and silicon carbide is justified pursuant to Article XX(b) of the GATT 1994; and

¹⁵⁵⁴ The specific forms of the raw materials subject to the United States' claims are identified in Exhibit JE-5 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁵⁵ See discussion in Section VII.B.2 above.

¹⁵⁵⁶ The specific forms of the raw materials subject to the United States' claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁵⁷ See discussion in Section VII.C.3 above.

¹⁵⁵⁸ See discussion in Section VII.C.3 above.

- (e) The Panel exercises judicial economy in respect of whether the application of export quotas to bauxite, coke, fluorspar and silicon carbide, or the application of an export prohibition to zinc, are inconsistent with Paragraph 1.2 of China's Accession Protocol and Paragraphs 162 and 165 of China's Working Party Report.

8.4 In respect of claims concerning export quota administration and allocation:¹⁵⁵⁹

- (a) The Panel finds that China's prior export experience or export performance requirement, and minimum registered capital requirement, imposed on coke by virtue of the measures at issue¹⁵⁶⁰, are inconsistent with Paragraphs 1.2 and 5.1 of China's Accession Protocol, read in combination with Paragraphs 83(a), 83(b) and 83(d); and Paragraphs 84(a) and 84(b) of China's Working Party Report;
- (b) The Panel finds that China's prior export experience or export performance requirements, and minimum registered capital requirement, imposed on bauxite, fluorspar and silicon carbide by virtue of the measures at issue¹⁵⁶¹, are inconsistent with Paragraphs 1.2 and 5.1 of China's Accession Protocol, read in combination with Paragraphs 83(a), 83(b) and 83(d); and read in combination with Paragraphs 84(a) and 84(b) of China's Working Party Report;
- (c) The Panel finds that China's administration of its coke export quota through the involvement of the CCCMC is not inconsistent with Article X:3(a) of the GATT 1994;
- (d) The Panel finds that China's administration of its export quota bidding system for bauxite, fluorspar and silicon carbide through the involvement of the CCCMC is not inconsistent with Article X:3(a) of the GATT 1994; and
- (e) The Panel finds that the requirement for an exporter applicant to pay a bid-winning price for the right to export bauxite, fluorspar and silicon carbide is not inconsistent with Article VIII:1(a) of the GATT 1994 or Paragraph 11.3 of China's Accession Protocol.

8.5 In respect of claims concerning export licensing requirements:¹⁵⁶²

- (a) The Panel finds that China's export licensing regime is not *per se* inconsistent with Article XI:1 of the GATT 1994 solely on the basis that it permits export licensing agencies to require a licence for goods subject to export restrictions;
- (b) The Panel finds that Article 11(7) of *2008 Export License Administration Measures*, and Articles 5(5) and 8(4) of the *Working Rules on Export Licenses*, as applicable to export licences granted to applicants to export bauxite, coke, fluorspar, manganese, silicon carbide and zinc, are inconsistent with Article XI:1 of the GATT 1994;
- (c) The Panel does not make findings that Article 21 of the *CCCMC Coordination Measures* is inconsistent with GATT Article XI:1 in respect of the United States' claims concerning China's export licensing requirements because it is outside the Panel's terms of reference;

¹⁵⁵⁹ The specific forms of the raw materials subject to the United States' claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁶⁰ See discussion in Section VII.E.1 above.

¹⁵⁶¹ See discussion in Section VII.E.1 above.

¹⁵⁶² The specific forms of the raw materials subject to the United States' claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

- (d) The Panel does not make findings that Article 40(3) of China's *Measures for the Administration of Licensing Entities* is inconsistent with GATT Article XI:1 in respect of the United States' claims concerning China's export licensing requirements; and
- (e) The Panel exercises judicial economy in respect of whether China's export licensing regime is inconsistent with Paragraph 1.2 of China's Accession Protocol, read in combination with Paragraphs 162 and 165 of China's Working Party Report.

8.6 In respect of claims concerning a minimum export price requirement:¹⁵⁶³

- (a) The Panel finds that China, through the *2001 CCCMC Charter, Export Price Penalties Regulations, and Measures for Administration of Licensing Entities*, imposed a minimum export price requirement on exporters of bauxite, coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc, that is inconsistent with Article XI:1 of the GATT 1994;
- (b) The Panel finds that China failed to publish promptly the *2001 CCCMC Charter* in such manner that is consistent with Article X:1 of the GATT 1994; and
- (c) The Panel does not make findings on whether the administration of the price verification and chop procedure to yellow phosphorus by the CCCMC is inconsistent with Article X:3(a) of the GATT 1994 because it is outside the Panel's terms of reference.

2. Nullification and impairment

8.7 Under Article 3.8 of the DSU, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, we conclude that where China has acted inconsistently with Articles X:1, X:3(a), XI:1 of the GATT 1994; Paragraphs 1.2, 5.1 and 11.3 of China's Accession Protocol; and Paragraphs 83 and 84 of China's Working Party Report, it has nullified or impaired benefits accruing to the United States under the WTO Agreement.

3. Recommendations

8.8 Pursuant to Article 19.1 of the DSU, having found that China has acted inconsistently with Articles X:1, X:3(a) and XI:1 of the GATT 1994; Paragraphs 1.2, 5.1 and 11.3 of China's Accession Protocol; and Paragraphs 83 and 84 of China's Working Party Report, the Panel recommends that the Dispute Settlement Body requests China to bring the existing measures at issue into conformity with its obligations under the GATT 1994, China's Accession Protocol and China's Working Party Report. The Panel makes no recommendation on expired measures, namely the 2009 measures at issue and pre-2009 MEP-related measures. In respect of findings concerning export duties and export quotas, the Panel found that the series of measures operating collectively has resulted in the imposition of export duties or export quotas that are inconsistent with China's WTO obligations. The Panel, therefore, recommends that the Dispute Settlement Body requests China to bring its measures into conformity with its WTO obligations such that the "series of measures" does not operate to bring about a WTO-inconsistent result.

¹⁵⁶³ The specific forms of the raw materials subject to the United States' claims are identified in Exhibit JE-7 and paragraph 2.2 of the Descriptive Part to these Reports.

B. COMPLAINT BY THE EUROPEAN UNION (DS395)

1. Conclusions

8.9 In respect of claims concerning export duties:¹⁵⁶⁴

- (a) The Panel finds that the application of export duties to certain forms of bauxite, coke, fluorspar, magnesium, manganese, silicon metal and zinc, by virtue of the series of measures at issue¹⁵⁶⁵, is inconsistent with Paragraph 11.3 of China's Accession Protocol;
- (b) The Panel finds that China may not seek to justify the application of export duties to forms of fluorspar pursuant to Article XX(g) of the GATT 1994. Even assuming *arguendo* that China could seek to justify the application of export duties, the Panel finds that China has not demonstrated that the application of export duties to forms of fluorspar is justified pursuant to Article XX(g) of the GATT 1994;
- (c) The Panel finds that China may not seek to justify the application of export duties to forms of magnesium, manganese and zinc pursuant to Article XX(b) of the GATT 1994. Even assuming *arguendo* that China could seek to justify the application of export duties, the Panel finds that China has not demonstrated that the application of export duties to forms of magnesium, manganese and zinc is justified pursuant to Article XX(b) of the GATT 1994; and
- (d) The Panel concludes that the *Adjustment of Export Tariffs Circular* removed the WTO-inconsistent special duty applicable to yellow phosphorus before the Panel's establishment on 21 December 2009. Therefore, the Panel makes no findings on the *2009 Tariff Implementation Program* that applied a special duty rate to yellow phosphorus prior to 1 July 2009.

8.10 In respect of claims concerning export quotas:¹⁵⁶⁶

- (a) The Panel finds that the application of export quotas to certain forms of bauxite, coke, fluorspar and silicon carbide, by virtue of the series of measures at issue¹⁵⁶⁷, is inconsistent with Article XI:1 of the GATT 1994;
- (b) The Panel finds that the application of an export ban on certain forms of zinc, by virtue of the series measures at issue¹⁵⁶⁸, is inconsistent with Article XI:1 of the GATT 1994;
- (c) The Panel finds that China has not demonstrated that the application of an export quota to refractory-grade bauxite, classifiable under HS No. 2508.3000, is justified pursuant to Articles XI:2(a) or XX(g) of the GATT 1994;
- (d) The Panel finds that China has not demonstrated that the application of export quotas to coke and silicon carbide is justified pursuant to Article XX(b) of the GATT 1994; and

¹⁵⁶⁴ The specific forms of the raw materials subject to the European Union's claims are identified in Exhibit JE-5 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁶⁵ See discussion in Section VII.B.2 above.

¹⁵⁶⁶ The specific forms of the raw materials subject to the European Union's claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁶⁷ See discussion in Section VII.C.3 above.

¹⁵⁶⁸ See discussion in Section VII.C.3 above.

- (e) The Panel exercises judicial economy in respect of whether the application of export quotas to bauxite, coke, fluorspar and silicon carbide, or the application of an export prohibition to zinc, are inconsistent with Paragraph 1.2 of China's Accession Protocol and Paragraphs 162 and 165 of China's Working Party Report.

8.11 In respect of claims concerning export quota administration and allocation:¹⁵⁶⁹

- (a) The Panel finds that China's prior export experience or export performance requirement, and minimum registered capital requirement, imposed on coke by virtue of the measures at issue¹⁵⁷⁰, are inconsistent with Paragraphs 1.2 and 5.1 of China's Accession Protocol, read in combination with Paragraphs 83(a), 83(b) and 83(d); and Paragraphs 84(a) and 84(b) of China's Working Party Report;
- (b) The Panel finds that China's prior export experience or export performance requirement, imposed on coke is not inconsistent with Paragraph 5.2 of China's Accession Protocol read in combination with Paragraphs 84(a) and 84(b) of China's Working Party Report;
- (c) The Panel finds that China's prior export experience or export performance requirements, and minimum registered capital requirement, imposed on bauxite, fluorspar and silicon carbide by virtue the measures at issue¹⁵⁷¹, are inconsistent with Paragraphs 1.2 and 5.1 of China's Accession Protocol, read in combination with Paragraphs 83(a), 83(b) and 83(d); and read in combination with Paragraphs 84(a) and 84(b) of China's Working Party Report;
- (d) The Panel finds that China's prior export experience or export performance requirement imposed on bauxite, fluorspar and silicon carbide is not inconsistent with Paragraph 5.2 of China's Accession Protocol read in combination with Paragraphs 84(a) and 84(b) of China's Working Party Report;
- (e) The Panel finds that China's allocation of directly allocated export quotas through the use of the operation capacity criterion, by virtue of the measures at issue¹⁵⁷², is inconsistent with Article X:3(a) of the GATT 1994;
- (f) The Panel finds that China's did not publish promptly the total amount and procedure for the allocation of a zinc export quota and thus acted in a manner inconsistent with Article X:1 of the GATT 1994; and
- (g) The Panel does not make findings that China did not publish promptly the total amount of the coke export quota in such a manner that is inconsistent with Article X:1 of the GATT 1994 because this claim is outside the Panel's terms of reference.

8.12 In respect of claims concerning export licensing requirements:¹⁵⁷³

¹⁵⁶⁹ The specific forms of the raw materials subject to the European Union's claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁷⁰ See discussion in Section VII.E.1 above.

¹⁵⁷¹ See discussion in Section VII.E.1 above.

¹⁵⁷² See discussion in Section VII.E.2 above.

¹⁵⁷³ The specific forms of the raw materials subject to the European Union's claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

- (a) The Panel finds that China's export licensing regime is not *per se* inconsistent with Article XI:1 of the GATT 1994 solely on the basis that it permits export licensing agencies to require a licence for goods subject to export restrictions;
- (b) The Panel finds that Article 11(7) of *2008 Export License Administration Measures*, and Articles 5(5) and 8(4) of the *Working Rules on Export Licenses*, as applicable to export licences granted to applicants to export bauxite, coke, fluorspar, manganese, silicon carbide and zinc, are inconsistent with Article XI:1 of the GATT 1994;
- (c) The Panel finds that the European Union's claims under Articles X:1 and X:3(a) concerning export licensing are outside the Panel's terms of reference;
- (d) The Panel exercises judicial economy in respect of whether China's export licensing regime is inconsistent with Paragraph 1.2 of China's Accession Protocol, read in combination with Paragraphs 162 and 165 of China's Working Party Report; and
- (e) The Panel exercises judicial economy in respect of whether China's export licensing regime is inconsistent with Paragraphs 1.2 and 5.1 of China's Accession Protocol, read in combination with Paragraphs 83 and 84 of China's Working Party Report.

8.13 In respect of claims concerning a minimum export price requirement.¹⁵⁷⁴

- (a) The Panel finds that China, through the *2001 CCCMC Charter, Export Price Penalties Regulations*, and *Measures for Administration of Licensing Entities*, imposed a minimum export price requirement on exporters of bauxite, coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc, that is inconsistent with Article XI:1 of the GATT 1994;
- (b) The Panel finds that China failed to publish promptly the *2001 CCCMC Charter* in such manner that is consistent with Article X:1 of the GATT 1994; and
- (c) The Panel does not make findings on whether the administration of the price verification and chop procedure to yellow phosphorus by the CCCMC is inconsistent with Article X:3(a) of the GATT 1994 because it is outside the Panel's terms of reference.

2. Nullification and impairment

8.14 Under Article 3.8 of the DSU, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, we conclude that where China has acted inconsistently with Articles X:1, X:3(a), XI:1 of the GATT 1994; Paragraphs 1.2, 5.1 and 11.3 of China's Accession Protocol; and Paragraphs 83 and 84 of China's Working Party Report, it has nullified or impaired benefits accruing to the European Union under the WTO Agreement.

3. Recommendations

8.15 Pursuant to Article 19.1 of the DSU, having found that China has acted inconsistently with Articles X:1, X:3(a) and XI:1 of the GATT 1994; Paragraphs 1.2, 5.1 and 11.3 of China's Accession Protocol; and Paragraphs 83 and 84 of China's Working Party Report, the Panel recommends that the Dispute Settlement Body requests China to bring the existing measures at issue into conformity with

¹⁵⁷⁴ The specific forms of the raw materials subject to the European Union's claims are identified in Exhibit JE-7 and paragraph 2.2 of the Descriptive Part to these Reports.

its obligations under the GATT 1994, China's Accession Protocol and China's Working Party Report. The Panel makes no recommendation on expired measures, namely the 2009 measures at issue and pre-2009 MEP-related measures. In respect of findings concerning export duties and export quotas, the Panel found that the series of measures operating collectively has resulted in the imposition of export duties or export quotas that are inconsistent with China's WTO obligations. The Panel, therefore, recommends that the Dispute Settlement Body requests China to bring its measures into conformity with its WTO obligations such that the "series of measures" does not operate to bring about a WTO-inconsistent result.

C. COMPLAINT BY MEXICO (DS398)

1. Conclusions

8.16 In respect of claims concerning export duties:¹⁵⁷⁵

- (a) The Panel finds that the application of export duties to certain forms of bauxite, coke, fluorspar, magnesium, manganese, silicon metal and zinc, by virtue of the series of measures at issue¹⁵⁷⁶, is inconsistent with Paragraph 11.3 of China's Accession Protocol;
- (b) The Panel finds that China may not seek to justify the application of export duties to forms of fluorspar pursuant to Article XX(g) of the GATT 1994. Even assuming *arguendo* that China could seek to justify the application of export duties, the Panel finds that China has not demonstrated that the application of export duties to forms of fluorspar is justified pursuant to Article XX(g) of the GATT 1994;
- (c) The Panel finds that China may not seek to justify the application of export duties to forms of magnesium, manganese and zinc pursuant to Article XX(b) of the GATT 1994. Even assuming *arguendo* that China could seek to justify the application of export duties, the Panel finds that China has not demonstrated that the application of export duties to forms of magnesium, manganese and zinc is justified pursuant to Article XX(b) of the GATT 1994; and
- (d) The Panel concludes that the *Adjustment of Export Tariffs Circular* removed the WTO-inconsistent special duty applicable to yellow phosphorus before the Panel's establishment on 21 December 2009. Therefore, the Panel makes no findings on the *2009 Tariff Implementation Program* that applied a special duty rate to yellow phosphorus prior to 1 July 2009.

8.17 In respect of claims concerning export quotas:¹⁵⁷⁷

- (a) The Panel finds that the application of export quotas to certain forms of bauxite, coke, fluorspar and silicon carbide, by virtue of the series of measures at issue¹⁵⁷⁸, is inconsistent with Article XI:1 of the GATT 1994;
- (b) The Panel finds that the application of an export ban on certain forms of zinc, by virtue of the series measures at issue¹⁵⁷⁹, is inconsistent with Article XI:1 of the GATT 1994;
- (c) The Panel finds that China has not demonstrated that the application of an export quota to refractory-grade bauxite, classifiable under HS No. 2508.3000, is justified pursuant to Articles XI:2(a) or XX(g) of the GATT 1994;
- (d) The Panel finds that China has not demonstrated that the application of export quotas to coke and silicon carbide is justified pursuant to Article XX(b) of the GATT 1994; and

¹⁵⁷⁵ The specific forms of the raw materials subject to Mexico's claims are identified in Exhibit JE-5 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁷⁶ See discussion in Section VII.B.2 above.

¹⁵⁷⁷ The specific forms of the raw materials subject to Mexico's claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁷⁸ See discussion in Section VII.C.3 above.

¹⁵⁷⁹ See discussion in Section VII.C.3 above.

- (e) The Panel exercises judicial economy in respect of whether the application of export quotas to bauxite, coke, fluorspar and silicon carbide, or the application of an export prohibition to zinc, are inconsistent with Paragraph 1.2 of China's Accession Protocol and Paragraphs 162 and 165 of China's Working Party Report.

8.18 In respect of claims concerning export quota administration and allocation:¹⁵⁸⁰

- (a) The Panel finds that China's prior export experience or export performance requirement, and minimum registered capital requirement, imposed on coke by virtue of the measures at issue¹⁵⁸¹, are inconsistent with Paragraphs 1.2 and 5.1 of China's Accession Protocol, read in combination with Paragraphs 83(a), 83(b) and 83(d); and Paragraphs 84(a) and 84(b) of China's Working Party Report;
- (b) The Panel finds that China's prior export experience or export performance requirements, and minimum registered capital requirement, imposed on bauxite, fluorspar and silicon carbide by virtue the measures at issue¹⁵⁸², are inconsistent with Paragraphs 1.2 and 5.1 of China's Accession Protocol, read in combination with Paragraphs 83(a), 83(b) and 83(d); and read in combination with Paragraphs 84(a) and 84(b) of China's Working Party Report;
- (c) The Panel finds that China's administration of its coke export quota through the involvement of the CCCMC is not inconsistent with Article X:3(a) of the GATT 1994;
- (d) The Panel finds that China's administration of its export quota bidding system for bauxite, fluorspar and silicon carbide through the involvement of the CCCMC is not inconsistent with Article X:3(a) of the GATT 1994; and
- (e) The Panel finds that the requirement for an exporter applicant to pay a bid-winning price for the right to export bauxite, fluorspar and silicon carbide is not inconsistent with Article VIII:1(a) of the GATT 1994 or Paragraph 11.3 of China's Accession Protocol.

8.19 In respect of claims concerning export licensing requirements:¹⁵⁸³

- (a) The Panel finds that China's export licensing regime is not *per se* inconsistent with Article XI:1 of the GATT 1994 solely on the basis that it permits export licensing agencies to require a licence for goods subject to export restrictions;
- (b) The Panel finds that Article 11(7) of *2008 Export License Administration Measures*, and Articles 5(5) and 8(4) of the *Working Rules on Export Licenses*, as applicable to export licences granted to applicants to export bauxite, coke, fluorspar, manganese, silicon carbide and zinc, are inconsistent with Article XI:1 of the GATT 1994;
- (c) The Panel does not make findings that Article 21 of the *CCCMC Coordination Measures* or Article 40(3) of China's *Measures for the Administration of Licensing Entities* is inconsistent with GATT Article XI:1 in respect of Mexico's claims concerning China's export licensing requirements;

¹⁵⁸⁰ The specific forms of the raw materials subject to Mexico's claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

¹⁵⁸¹ See discussion in Section VII.E.1 above.

¹⁵⁸² See discussion in Section VII.E.1 above.

¹⁵⁸³ The specific forms of the raw materials subject to Mexico's claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

- (d) The Panel exercises judicial economy in respect of whether China's export licensing regime is inconsistent with Paragraph 1.2 of China's Accession Protocol, read in combination with Paragraphs 162 and 165 of China's Working Party Report.

8.20 In respect of claims concerning a minimum export price requirement:¹⁵⁸⁴

- (a) The Panel finds that China, through the *2001 CCCMC Charter, Export Price Penalties Regulations, and Measures for Administration of Licensing Entities*, imposed a minimum export price requirement on exporters of bauxite, coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc, that is inconsistent with Article XI:1 of the GATT 1994;
- (b) The Panel finds that China failed to publish promptly the *2001 CCCMC Charter* in such manner that is consistent with Article X:1 of the GATT 1994; and
- (c) The Panel does not make findings on whether the administration of the price verification and chop procedure to yellow phosphorus by the CCCMC is inconsistent with Article X:3(a) of the GATT 1994 because it is outside the Panel's terms of reference.

2. Nullification and impairment

8.21 Under Article 3.8 of the DSU, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, we conclude that where China has acted inconsistently with Articles X:1, X:3(a), XI:1 of the GATT 1994; Paragraphs 1.2, 5.1 and 11.3 of China's Accession Protocol; and Paragraphs 83 and 84 of China's Working Party Report, it has nullified or impaired benefits accruing to Mexico under the WTO Agreement.

3. Recommendations

8.22 Pursuant to Article 19.1 of the DSU, having found that China has acted inconsistently with Articles X:1, X:3(a) and XI:1 of the GATT 1994; Paragraphs 1.2, 5.1 and 11.3 of China's Accession Protocol; and Paragraphs 83 and 84 of China's Working Party Report, the Panel recommends that the Dispute Settlement Body requests China to bring the existing measures at issue into conformity with its obligations under the GATT 1994, China's Accession Protocol and China's Working Party Report. The Panel makes no recommendation on expired measures, namely the 2009 measures at issue and pre-2009 MEP-related measures. In respect of findings concerning export duties and export quotas, the Panel found that the series of measures operating collectively has resulted in the imposition of export duties or export quotas that are inconsistent with China's WTO obligations. The Panel, therefore, recommends that the Dispute Settlement Body requests China to bring its measures into conformity with its WTO obligations such that the "series of measures" does not operate to bring about a WTO-inconsistent result.

¹⁵⁸⁴ The specific forms of the raw materials subject to the Mexico's claims are identified in Exhibit JE-7 and paragraph 2.2 of the Descriptive Part to these Reports.