

8 CONCLUSIONS

8.1. For the reasons set forth in this Report, we conclude that the United States' claim regarding adverse effects under Articles 3.1 and 3.4 of the Anti-Dumping Agreement and Articles 15.1 and 15.4 of the SCM Agreement is not properly before us.

8.2. Further, and for the reasons set forth in this Report, we conclude that:

- a. MOFCOM's conclusions regarding the price effects of subject imports are not consistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement and Articles 15.1 and 15.2 of the SCM Agreement;
- b. MOFCOM's revised finding that subject imports caused material injury to the domestic industry is not consistent with Articles 3.1 and 3.5 of the Anti-Dumping Agreement and Articles 15.1 and 15.5 of the SCM Agreement; and
- c. MOFCOM acted inconsistently with Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement with respect to the disclosure of essential facts regarding parallel pricing and sales obstacles.

Accordingly, China's measures taken to comply with the DSB's recommendations and rulings, at issue in this proceeding, are inconsistent with the relevant covered agreements, and therefore China failed to comply with the recommendations and rulings of the DSB.

8.3. In addition, and for the reasons set forth in this Report, we conclude that the United States has failed to demonstrate that MOFCOM acted inconsistently with Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement with respect to the disclosure of essential facts regarding the domestic industry's loss of market share in 2008 and price reduction in the first quarter of 2009, the decrease in Wuhan's price-cost differential in 2008, economies of scale, domestic capacity, output and demand, and inventory overhang.

8.4. Finally, in light of our findings of substantive violations, we exercised judicial economy and made no findings with regard to the United States' public notice claims under Article 12 of the Anti-Dumping Agreement and Article 22 of the SCM Agreement.

8.5. 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 we have found the measures at issue inconsistent with the provisions of the Anti-Dumping and SCM Agreements cited above, they have nullified or impaired benefits accruing to the United States under these agreements.

8.6. We therefore conclude that China failed to implement the recommendations and rulings of the DSB to bring its measures into conformity with its obligations under the Anti-Dumping and SCM Agreements.³⁴⁵ To the extent that China failed to comply with the recommendations and rulings of the DSB in the original dispute, those recommendations and rulings remain operative.

³⁴⁵ We recall that China asserts that the measures at issue expired after the issuance of the Interim Report. However, there is no evidence properly before us in this regard.