

7.12 Consequential claims

7.449. The United States claims that China acted inconsistently with Article 1 of the Anti-Dumping Agreement, Article 10 of the SCM Agreement, and Article VI of the GATT 1994, as a consequence of the alleged violations of the Anti-Dumping Agreement and the SCM Agreement.⁷⁰⁴

7.450. China argues that the United States has not presented a *prima facie* case and therefore has not established its claims of consequential violations under Article 1 of the Anti-Dumping Agreement, Article 10 of the SCM Agreement, and Article VI of the GATT 1994.⁷⁰⁵

7.451. As is clear from the panel request, the US claims under Article 1 of the Anti-Dumping Agreement, Article 10 of the SCM Agreement, and Article VI of the GATT 1994 are consequential. That is, any findings of violation would necessarily depend on and follow our conclusions on violations with respect to the substantive claims brought by the United States under other provisions of the Anti-Dumping Agreement and the SCM Agreement. It is particular to the nature of a consequential claim that a *prima facie* case is effectively made out where a complaining party establishes a violation of a substantive provision and demonstrates that the consequential claim is predicated on the substantive provision. China does not dispute the predicate relationship; for its part, the United States asserted claims of consequential violations of Article 1 of the Anti-Dumping Agreement, Article 10 of the SCM Agreement, and Article VI of the GATT 1994 on the basis of its substantive claims.⁷⁰⁶

7.452. China expressed concern because the United States did not set out arguments in support of its consequential claims in its first written submission.⁷⁰⁷ China did not demonstrate that it suffered any prejudice or that the panel process was impeded in any way as a result. We recall that in an Article 21.5 proceeding, both first and rebuttal submissions are submitted before the panel meets with the parties. Given the nature of consequential claims, as described above, while it would have been preferable for the United States to include its arguments in support of those claims in its first written submission⁷⁰⁸, in the circumstances of this dispute we see no reason not to consider and resolve these claims.

7.453. In the light of the foregoing, we conclude that, as a consequence of the inconsistencies with the Anti-Dumping Agreement and the SCM Agreement we have found, China acted inconsistently with Article 1 of the Anti-Dumping Agreement, Article 10 of the SCM Agreement, and Article VI of the GATT 1994.

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set out in this report, we conclude that the US claims under Articles 6.1.2 and 6.2 of the Anti-Dumping Agreement and Article 12.1.2 of the SCM Agreement are not within our terms of reference.⁷⁰⁹

8.2. For the reasons set forth in this report, we conclude that the United States has demonstrated that China acted inconsistently with:

- a. the second sentence of Article 2.2.1.1 of the Anti-Dumping Agreement;
- b. Articles 3.1 and 3.2 of the Anti-Dumping Agreement and Articles 15.1 and 15.2 of the SCM Agreement;
- c. Articles 3.1 and 3.4 of the Anti-Dumping Agreement and Articles 15.1 and 15.4 of the SCM Agreement;

⁷⁰⁴ United States' second written submission, para. 224.

⁷⁰⁵ China's first written submission, para. 411; second written submission, paras. 365-367.

⁷⁰⁶ United States' panel request, paras. 11, 12, and 13; second written submission, para. 224.

⁷⁰⁷ China's first written submission, para. 411; second written submission, para. 365.

⁷⁰⁸ Paragraph 6 of the Panel's Working Procedures specifies that, before the substantive meeting of the Panel with the parties, each party "shall submit to the Panel a first written submission, and subsequently a written rebuttal, in which it presents the facts of the case and its arguments, and counter-arguments, respectively". The Panel retains the right to modify its working procedures.

⁷⁰⁹ See the Panel's preliminary ruling, Annex E-1.

- d. Articles 3.1 and 3.5 of the Anti-Dumping Agreement and Articles 15.1 and 15.5 of the SCM Agreement;
- e. Article 6.1 of the Anti-Dumping Agreement and Article 12.1 of the SCM Agreement;
- f. Article 6.4 of the Anti-Dumping Agreement and Article 12.3 of the SCM Agreement;
- g. Article 6.8 and paragraph 3 of Annex II of the Anti-Dumping Agreement; and
- h. Article 1 of the Anti-Dumping Agreement, Article 10 of the SCM Agreement and Article VI of the GATT 1994.

8.3. For the reasons set forth in this report, we conclude that the United States has not demonstrated that China acted inconsistently with:

- a. Article 6.9 of the Anti-Dumping Agreement; and
- b. Article 9.4(i) of the Anti-Dumping Agreement.

8.4. We do not consider it necessary to address the US claim under Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement and Articles 22.3 and 22.5 of the SCM Agreement.

8.5. Pursuant to 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 of benefits under that agreement. Accordingly, to the extent MOFCOM has acted inconsistently with certain provisions of the Anti-Dumping and SCM Agreements, we conclude that China has nullified or impaired benefits accruing to the United States under these agreements.

8.6. Above, we concluded that China acted inconsistently with certain provisions of the Anti-Dumping and SCM Agreements. Accordingly, China's measures taken to comply with the DSB's recommendations and rulings in the original dispute, at issue in this proceeding, are inconsistent with the relevant covered agreements. China therefore failed to comply with the recommendations and rulings of the DSB to bring its measures into conformity with its obligations under the Anti-Dumping and SCM Agreements. To the extent that China failed to comply with the recommendations and rulings of the DSB, those recommendations and rulings remain operative.
