customers was "moot". We consider that this explanation by the USDOC is sufficient for the purpose of Article 22.5 of the SCM Agreement. The USDOC's statement makes it clear that the USDOC did not use the NMDC export price quotes as a benchmark because they pertain to the very government provider under investigation. Interested parties could reasonably understand from this that the USDOC would not engage in price comparisons that would necessarily be circular. Interested parties could also reasonably understand that, because of the USDOC's decision not to engage in circular price comparisons using government price benchmarks, there was no need to consider whether or not a government would subsidize its export sales. We reject India's Article 22.5 claim accordingly.

7.10 Consequential claims under Articles 10, 19.3, 19.4, 32.1 and 32.5 of the SCM Agreement, Article VI of the GATT 1994 and Article XVI:4 of the WTO Agreement

7.536. India notes that Articles 19.3 and 19.4 of the SCM Agreement mandate that countervailing duty in respect of any product shall be levied in the appropriate amount and not in excess of the amount of subsidy found to exist. In addition, India notes that Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement require that each WTO Member bring its laws, regulations and administrative procedures into conformity with the SCM Agreement. India submits that, to the extent the Panel finds that the determinations made by the United States in the underlying proceedings are in breach of Articles 1, 2 and 14 of the SCM Agreement or that the United States has failed to ensure conformity of its laws, regulations and administrative procedures identified by India with the SCM Agreement, the Panel should also find, respectively, that the said determinations result in the imposition of countervailing duty in inappropriate amount and in excess of the amount of subsidy found to exist, contrary to Articles 19.3 and 19.4, and that the United States has acted inconsistently with Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement. India also submits that to the extent the imposition of the countervailing duties at issue is not in accordance with the SCM Agreement, such imposition is *ipso facto* in breach of Articles 10 and 32.1 of the SCM Agreement and Article VI of the GATT 1994.

7.537. We note that India's claims under Articles 10, 19.3, 19.4, 32.1 and 32.5 of the SCM Agreement, Article VI of the GATT 1994, and Article XVI:4 of the WTO Agreement are purely consequential, in the sense that they depend on the outcome of other claims pursued by India under other provisions of the SCM Agreement. Since we have already resolved those claims, we see no need to address India's consequential claims under Articles 10, 19.3, 19.4, 32.1 and 32.5 of the SCM Agreement, Article VI of the GATT 1994, and Article XVI:4 of the WTO Agreement. We therefore exercise judicial economy in respect of those claims.

8 CONCLUSIONS AND RECOMMENDATION

8.1 Conclusions

8.1. Having considered the United States' request for preliminary rulings regarding the scope of these proceedings, we conclude that:

a. the 2013 sunset review is within the Panel's terms of reference;

b. India's claim that the United States acted inconsistently with Article 11.1 of the SCM Agreement by failing to "initiate" an investigation into new subsidies is within the Panel's terms of reference; and

c. India's claims that the United States acted inconsistently with Articles 11.1, 11.2 and 11.9 of the SCM Agreement in connection with the alleged initiation of an investigation, despite the insufficiency of evidence in the domestic industry's written application, fall outside the Panel's terms of reference.

8.2. In light of the findings set forth in this Report, the Panel concludes that the United States acted inconsistently with:

a. in connection with the provision of high grade iron ore by the NMDC:

i. Article 2.1(c) of the SCM Agreement by failing to take account of all the mandatory factors in its determination of *de facto* specificity regarding NMDC; and

ii. Article 14(d) of the SCM Agreement by failing to consider the relevant domestic price information for use as Tier I benchmarks, in respect of which the United States sought to rely on *ex post* rationalization;

b. in connection with the Captive Mining of Iron Ore Programme and the Captive Mining of Coal Programme:

i. Article 12.5 of the SCM Agreement by failing to determine the existence of the Captive Mining of Iron Ore Programme on the basis of accurate information;

ii. Article 1.1(a)(1)(iii) of the SCM Agreement by determining without sufficient evidentiary basis that GOI granted Tata a financial contribution in the form of a captive coal mining lease under the Captive Mining of Coal Programme/Coal Mining Nationalization Act; and

iii. Article 14(d) of the SCM Agreement in connection with the USDOC's rejection of certain domestic price information when assessing benefit in respect of mining rights for iron ore;

c. Article 15.3 of the SCM Agreement, with respect to Section 1677(7)(G) "as such" and "as applied" in the original investigation at issue, in connection with the "cross-cumulation" of the effects of imports that are subject to a CVD investigation with the effects of imports that are not subject to simultaneous CVD investigations;

d. Articles 15.1, 15.2, 15.4 and 15.5 of the SCM Agreement, with respect to Section 1677(7)(G) "as such" and "as applied" in the original investigation at issue, in connection with injury assessments based on *inter alia* the volume, effects and impact of non-subsidized, dumped imports;

e. Article 12.7 of the SCM Agreement by applying "facts available" devoid of any factual foundation in connection with the following determinations:

i. JSW received iron ore from NMDC at no charge during the period covered by the 2006 administrative review;

ii. VMPL used and benefited from the 1993 KIP, 1996 KIP, 2001 KIP and 2006 KIP subsidy programmes;

iii. Tata used and benefited, during the period covered by the 2008 administrative review, from the following subsidy programmes under the 2001 JSIP:

(1) capital investment incentive;

(2) feasibility study and project report cost reimbursement;

(3) incentive for quality certification; and

(4) employment incentives;

iv. Tata used and benefited, during the period covered by the 2008 administrative review, from the following subsidy programmes:

(1) 6 programmes at issue administered by the SGOG;

(2) 8 programmes at issue administered by the SGOM;

(3) 10 programmes at issue administered by the SGAP;

(4) 9 programmes at issue administered by the SGOC; and

(5) 22 programmes at issue administered by the SGOK;

v. Tata used and benefited from the subsidy provided through the purchase of high-grade iron ore from NMDC during the period covered by the 2008 administrative review;

vi. Tata used and benefited from the MDA and MAI subsidy programmes during the period covered by the 2008 administrative review; and

vii. Tata used and benefited from the six sub-programmes of the SEZ Act at issue during the period covered by the 2008 administrative review;

f. Article 22.5 of the SCM Agreement by failing to provide adequate notice of the USDOC's consideration of certain in-country benchmarks when assessing benefit conferred by NMDC's sales of iron ore.

8.3. In light of the findings set forth in this Report, the Panel rejects India's claims that the United States acted inconsistently with:

a. Article 14(d) of the SCM Agreement with respect to Section 351.511(a)(2)(i) to (iii) "as such";

b. Articles 14(d), 19.3 and 19.4 of the SCM Agreement with respect to Section 351.511(a)(2)(iv) "as such";

c. in connection with the provision of high grade iron ore by the NMDC:

i. Article 1.1(a)(1) of the SCM Agreement in connection with the USDOC's determination that NMDC is a public body;

ii. Article 2.4 of the SCM Agreement by determining *de facto* specificity without positive evidence;

iii. Articles 1.1(b) and 14(d) of the SCM Agreement by:

(1) failing to determine whether the price charged by NMDC was adequate for NMDC itself, prior to applying the Tier I and II benchmarks to determine benefit to the recipient, in connection with Sections 351.511(a)(2)(i) to (iii) "as applied";

(2) failing to apply the ISPAT Tier I benchmark price to assess sales of iron ore by NMDC to Essar and JSW in the 2006 administrative review;

(3) using benchmark prices adjusted for delivery charges; and

(4) failing to use NMDC's export prices to determine Tier II benchmark prices in the 2006, 2007 and 2008 administrative reviews;

iv. the chapeau of Article 14 of the SCM Agreement by failing to explain why it excluded NMDC's export prices from the 2006, 2007 and 2008 reviews;

d. in connection with the Captive Mining of Iron Ore Programme and the Captive Mining of Coal Programme:

i. Article 1.1(a)(1)(iii) of the SCM Agreement by determining that the GOI provided goods through the grant of mining rights for iron ore and coal;

ii. Articles 1.1(b) and 14(d) of the SCM Agreement in connection with the USDOC's notional price methodology for purposes of assessing benefit; and

iii. Article 14(d) of the SCM Agreement in connection with the USDOC's use of delivered prices to determine benefit in respect of mining rights for coal;

e. in connection with SDF:

   i. Article 1.1(a)(1) of the SCM Agreement in connection with the USDOC's determination that the SDF Managing Committee constitutes a public body;

   ii. Article 1.1(a)(1)(i) of the SCM Agreement in connection with:

      (1) the USDOC's determination that the SDF Managing Committee provided direct transfers of funds; and

      (2) the USDOC's reference to SDF loans as "potential direct transfers of funds" in the 2008 administrative review;

   iii. Article 1.1(b), the chapeau of Article 14 and Article 14(b) of the SCM Agreement in connection with the USDOC's determination of benefit conferred by SDF loans in the 2006 and 2008 administrative reviews;

f. Articles 15.1, 15.2, 15.3, 15.4 and 15.5 of the SCM Agreement in connection with Sections 1675a(a)(7) and 1675b(e)(2) "as such", and in connection with Section 1675a(a)(7) "as applied" in the sunset review at issue;

g. Articles 15.1 and 15.4 of the SCM Agreement in connection with USITC's evaluation of certain economic factors in its injury determination;

h. Article 12.7 of the SCM Agreement in connection with Sections 1677e(b) and 351.308(a), (b) and (c) "as such";

i. Article 12.7 of the SCM Agreement in connection with the application of "facts available" concerning:

   i. the USDOC's "rule" to use the highest non-*de minimis* subsidy rate; and

   ii. the USDOC's determinations that:

      (1) MML is a government or public body, in the context of the 2006 administrative review;

      (2) the purchase of iron ore by MML was for more than adequate remuneration, in the context of the 2006 administrative review;

      (3) Tata used and benefited, during the period covered by the 2008 administrative review, from the following subsidy programmes under the 2001 JSIP: (a) exemption of electricity duty; (b) offset of Jharkhand sales tax; (c) capital power generating subsidy; (d) interest subsidy; (e) stamp duty and registration; and (f) pollution control equipment subsidy;

      (4) Tata used and benefited, during the period covered by the 2008 administrative review, from the following subsidy programmes under the infrastructure subsidies to mega projects: (a) tax incentives; (b) grants; and (c) loans;

      (5) SDF loans provide a financial contribution in the form of a "potential direct transfer of funds", in the context of 2008 administrative review; and

      (6) Essar, ISPAT, SAIL and Tata benefited from a number of subsidy programmes, in the context of the 2013 sunset review;

j. Articles 11.1, 13.1, 21.1, 21.2, 22.1 and 22.2 of the SCM Agreement in connection with the examination of new subsidy allegations in the administrative reviews at issue; and

k. Article 22.5 of the SCM Agreement by failing to properly explain in the public notices the reasons for rejecting:

   i. the interested parties' argument relating to the treatment of SDF levies; and

   ii. the use of NMDC export prices as a price benchmark.

8.4. In light of the findings set forth in paragraphs 8.2 and 8.3 of this Report, the Panel exercises judicial economy in respect of India's claims under:

a. Articles 2.1(c) and 2.4 of the SCM Agreement in connection with the USDOC's determination that the Captive Mining of Iron Ore Programme is *de facto* specific;

b. Articles 2.1(a) and (b) of the SCM Agreement in connection with the USDOC's determination that the Captive Mining of Coal Programme/Coal Mining Nationalization Act is *de jure* specific;

c. Article 22.5 of the SCM Agreement in connection with the USDOC's public notice concerning:

   i. the GOI's grant of captive coal mining rights to Tata; and

   ii. the *de facto* specificity of the Captive Mining of Iron Ore Programme.

d. Articles 10, 19.3, 19.4, 32.1 and 32.5 of the SCM Agreement, Article VI of the GATT 1994, and Article XVI:4 of the WTO Agreement in connection with India's consequential claims.

8.2 Recommendation

8.5. Pursuant to 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, to the extent the United States has acted inconsistently with certain provisions of the SCM Agreement, we conclude that the United States has nullified or impaired benefits accruing to India under that Agreement.

8.6. Pursuant to Article 19.1 of the DSU, having found that the United States acted inconsistently with certain provisions of the SCM Agreement, we recommend the United States bring its measures into conformity with its obligations under that Agreement. The second sentence of Article 19.1 provides the Panel with the discretion to suggest ways in which the United States might implement this recommendation. In this regard, India has proposed specific suggestions for us to make.[871] Given the complexities to which implementation may give rise, we decline to exercise our discretion under the second sentence of Article 19.1 in the manner proposed by India.

[871] India's first written submission, para. 642.