

China was not required to advance further arguments to establish a consequential violation of Articles 10 and 32.1.<sup>523</sup>

7.413. We have found in this dispute that the United States acted inconsistently with Articles 1, 2 and 11 of the SCM Agreement. As a consequence, we also find that the United States has acted inconsistently with Articles 10 and 32.1 of the SCM Agreement. We do not consider it necessary to make a finding under Article VI:3 of the GATT 1994.

## 8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, the Panel concludes as follows:<sup>524</sup>

- i. With respect to 12 countervailing duty investigations, namely Pressure Pipe, Line Pipe, Lawn Groomers, Kitchen Shelving, OCTG, Wire Strand, Seamless Pipe, Print Graphics, Drill Pipe, Aluminum Extrusions, Steel Cylinders and Solar Panels<sup>525</sup>, the United States acted inconsistently with Article 1.1(a)(1) of the SCM Agreement when the USDOC found that SOEs were public bodies.
- ii. The USDOC's policy, articulated in Kitchen Shelving, to presume that a majority government-owned entity is a public body, is inconsistent, as such, with Article 1.1(a)(1) of the SCM Agreement.
- iii. With respect to four countervailing duty investigations, namely Steel Cylinders, Solar Panels, Wind Towers, and Steel Sinks<sup>526</sup>, China has failed to establish that the USDOC acted inconsistently with the United States' obligations under Article 11 of the SCM Agreement by initiating the challenged investigations without sufficient evidence of a financial contribution.
- iv. With respect to 12 countervailing duty investigations, namely Pressure Pipe, Line Pipe, Lawn Groomers, Kitchen Shelving, OCTG, Wire Strand, Seamless Pipe, Print Graphics, Drill Pipe, Aluminum Extrusions, Steel Cylinders and Solar Panels<sup>527</sup>, China has failed to establish that the USDOC acted inconsistently with the obligations of the United States under Article 14(d) or Article 1.1(b) of the SCM Agreement by rejecting in-country private prices in China.
- v. With respect to 12 countervailing duty investigations, namely Pressure Pipe, Line Pipe, Lawn Groomers, Kitchen Shelving, OCTG, Wire Strand, Seamless Pipe, Print Graphics, Drill Pipe, Aluminum Extrusions, Steel Cylinders and Solar Panels<sup>528</sup>, China has established that the USDOC acted consistently with the obligations of the United States under the last sentence of Article 2.1(c) of the SCM Agreement by failing to take account of the two factors listed therein. However, China has not established that the USDOC acted inconsistently with the obligations of the United States under Article 2.1 of the SCM Agreement by failing to apply the first of the "other factors" under Article 2.1(c) in light of a prior "appearance of non-specificity" resulting from the application of subparagraphs (a) and (b); by failing to identify a "subsidy programme"; or by failing to identify a "granting authority".
- vi. With respect to 14 countervailing duty investigations, namely Pressure Pipe, Line Pipe, Lawn Groomers, Kitchen Shelving, OCTG, Wire Strand, Seamless Pipe, Print Graphics, Drill Pipe, Aluminum Extrusions, Steel Cylinders, Solar Panels, Wind Towers and Steel Sinks<sup>529</sup>, China has not established that the USDOC acted inconsistently with the United States' obligations under Article 11 of the

<sup>523</sup> Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 610.

<sup>524</sup> The Panel's conclusions incorporate those set forth in its preliminary ruling, as contained in document WT/DS437/4, circulated on 21 February 2013 and included as Annex A-8 to this Report, and which forms an integral part of this Report.

<sup>525</sup> See table in paragraph 7.1. of this Report.

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SCM Agreement by initiating the challenged investigations without sufficient evidence of specificity.

- vii. With respect to 13 countervailing duty investigations, namely Pressure Pipe, Line Pipe, Citric Acid, Lawn Groomers, OCTG, Wire Strand, Magnesia Bricks, Seamless Pipe, Print Graphics, Drill Pipe, Aluminum Extrusions, Steel Cylinders and Solar Panels<sup>530</sup>, China has not established that in 42 instances the USDOC acted inconsistently with the United States' obligations under Article 12.7 of the SCM Agreement by not relying on facts available on the record.
- viii. With respect to six countervailing duty investigations, namely Line Pipe, Thermal Paper, Citric Acid, OCTG, Wire Strand and Seamless Pipe<sup>531</sup>, China has established that the USDOC acted inconsistently with the United States' obligations under Article 2.2 of the SCM Agreement by making positive determinations of regional specificity while failing to establish that the alleged subsidy was limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority. With respect to the Print Graphics investigation<sup>532</sup>, however, China has failed to establish that the USDOC acted inconsistently with the United States' obligations under Article 2.2 of the SCM Agreement by making a positive determination of regional specificity while failing to establish that the alleged subsidy was limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority.
- ix. With respect to two countervailing duty investigations, namely Magnesia Bricks and Seamless Pipe<sup>533</sup>, China has established that the USDOC acted inconsistently with the obligations of the United States under Article 11.3 of the SCM Agreement by initiating investigations in respect of certain export restraints.
- x. As a consequence of the inconsistencies of the USDOC's actions with Articles 1, 2 and 11 of the SCM Agreement, the United States has acted inconsistently with Articles 10 and 32.1 of the SCM Agreement.

8.2. 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 the measures at issue are inconsistent with certain provisions of the SCM Agreement, they have nullified or impaired benefits accruing to China under that agreement.

8.3. Pursuant to Article 19.1 of the DSU, we recommend that the United States bring its measures into conformity with its obligations under the SCM Agreement.

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<sup>530</sup> See table in paragraph 7.1. of this Report. See Exhibit CHI-2; China's first written submission, para. 146 and fn 136.

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<sup>532</sup> See table in paragraph 7.1. of this Report.

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