

maintained within their territories". An examination of a claim under Article 25.2 of the SCM Agreement thus presupposes a finding, *inter alia*, that the measure at issue is a subsidy as defined in Article 1.1, and is specific within the meaning of Article 2 of the SCM Agreement. India has not made any independent arguments regarding specificity; India merely argues that, pursuant to Article 2.3 SCM Agreement⁷⁵², the measures at issue are specific subsidies as a result of being prohibited under Article 3.1 of the SCM Agreement.⁷⁵³

7.371. Thus, India's claim under Article 25 of the SCM Agreement is directly linked to, and depends on, the outcome of its claims under Article 3.1(b) of the SCM Agreement. As we have chosen to exercise judicial economy on India's claims under Article 3.1(b) of the SCM Agreement, there is no basis for us to rule on India's claim under Article 25 of the SCM Agreement. Having decided that it is not necessary for us to determine whether the measures at issue are subsidies within the meaning of the SCM Agreement, in particular Article 3.1(b), it follows *a fortiori* that it is not necessary for us to assess whether the measures should have been notified as subsidies under Article 25 of the SCM Agreement in order to secure a positive resolution of this dispute.

7.372. Accordingly, we also exercise judicial economy on India's claims under Article 25 of the SCM Agreement.

7.5 India's claim under Article XXIII:1(a) of the GATT 1994

7.373. India has requested us to find that "the measures at issue, individually and/or collectively, have nullified and/or impaired the benefits accruing to India under Article XXIII:1(a) of the GATT [1994]".⁷⁵⁴

7.374. We recall that, 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. We therefore conclude that, to the extent that the measures at issue are inconsistent with Article III:4 of the GATT 1994, they have nullified or impaired benefits accruing to India under that agreement.

8 CONCLUSIONS AND RECOMMENDATIONS

8.1. As regards our terms of reference, we have found that:

- a) for the reasons set forth in our preliminary ruling⁷⁵⁵, the Los Angeles Manufacturing Credit (LAMC) Adder (Measure 3), and the Massachusetts Manufacturer Adder (Measure 11) fall outside our terms of reference, whereas the Minnesota solar thermal rebate and the Minnesota solar photovoltaic rebate under Measure 10 fall within our terms of reference; and
- b) for the reasons set forth in section 7.1.1.2 of this Report, the "made in Washington" bonus in Section 82.16.165 of the Revised Code of Washington under Measure 1 does not fall within our terms of reference

8.2. In light of their amendment following the establishment of the Panel, for the reasons set forth in section 7.1.1 of this Report:

- a) we have decided to make findings, and, if necessary, recommendations on Measures 1 and 8 as amended; and
- b) we have decided to make findings, and, if necessary, recommendations on Measure 2 as implemented through both the 2016 and 2017 California Self-Generation Incentive Program (SGIP) Handbooks.

⁷⁵² According to Article 2.3 of the SCM Agreement, "[a]ny subsidy falling under the provisions of Article 3 shall be deemed to be specific".

⁷⁵³ India's first written submission, paras. 118, 233, 321, 424, 523, 623, 730, 831, 934, 1037, 1075, and 1167.

⁷⁵⁴ India's first written submission, para. 1177.

⁷⁵⁵ See Annex D-1 containing the preliminary ruling of the Panel.

8.3. In light of their repeal following the establishment of the Panel, for the reasons set forth in section 7.1.2 of this Report, we have decided:

- a) to make findings, and, if necessary, recommendations on the Minnesota solar energy production incentive (SEPI) program under Measure 10; and
- b) not to make findings and recommendations on the Minnesota solar thermal rebate under Measure 10.

8.4. For the reasons set forth in this Report, we conclude that the following measures are inconsistent with the United States' obligations under Article III:4 of the GATT 1994:

- a) the Washington State additional incentive (Measure 1), as contained in Sections 82.16.110 to 82.16.130 of the Revised Code of Washington, and Section 458-20-273 of the Washington Administrative Code;
- b) the California Manufacturer Adder (Measure 2), as embodied in Section 379.6 of the California Public Utilities Code, and implemented through the 2016 and 2017 SGIP Handbooks;
- c) the Montana tax incentive (Measure 4), as embodied in Sections 15-70-502, 15-70-503, and 15-70-522 of the Montana Annotated Code, and Administrative Rules of Montana, Sections 18.15.701 – 18.15.703 and 18.15.710 – 18.15.712;
- d) the Montana tax credit (Measure 5), as embodied in Section 15-32-703 of the Montana Annotated Code;
- e) the Montana tax refund (Measure 6), as embodied in Section 15-70-433 of the Montana Annotated Code;
- f) the Connecticut additional incentive (Measure 7), as embodied in Section 16-245ff of the General Statutes of Connecticut, and Request for Qualification for Eligible Contractors and Third Party PV System Owners;
- g) the Michigan Equipment and Labour Multipliers (Measure 8), as embodied in Public Act No. 342;
- h) the Delaware Equipment and Workforce Bonuses (Measure 9), as embodied in Sections 356(d) and (e) of the Renewable Energy Portfolio Standards Act, and Rules and Procedures to Implement the Renewable Energy Portfolio Standard;
- i) the Minnesota solar photovoltaic rebate under Measure 10, as embodied in Section 116C.7791 of the 2016 Minnesota Statutes; and
- j) the Minnesota solar energy production incentive (SEPI) under Measure 10, as embodied in Sections 216C.411 – 216C.415 of the 2016 Minnesota Statutes.

8.5. For the reasons set forth in this Report, we conclude as follows:

- a) With respect to India's claims under Articles 2.1 and 2.2 of the TRIMs Agreement, the Panel exercises judicial economy for the reasons set forth in section 7.4.1 of this Report.
- b) With respect to India's claims under Articles 3.1(b), 3.2, and 25 of the SCM Agreement, the Panel exercises judicial economy for the reasons set forth in section 7.4.2 of this Report.

8.6. In light of Article 3.8 of the DSU, the Panel concludes that, to the extent that the measures at issue are inconsistent with Article III:4 of the GATT 1994, they have nullified or impaired benefits accruing to India under that agreement within the meaning of Article XXIII:1(a) of the GATT 1994.

8.7. Pursuant to Article 19.1 of the DSU, we recommend that the DSB request the United States to bring the following measures into conformity with its obligations under Article III:4 of the GATT 1994:

- a) the Washington State additional incentive (Measure 1), as embodied in Sections 82.16.110 to 82.16.130 of the Revised Code of Washington, and Section 458-20-273 of the Washington Administrative Code;
- b) the California Manufacturer Adder (Measure 2), as embodied in Section 379.6 of the California Public Utilities Code, and implemented through the 2017 SGIP Handbook; and additionally, as implemented through the 2016 SGIP Handbook to the extent that the latter continues to govern certain aspects of the California Manufacturer Adder for past applicants;
- c) the Montana tax incentive (Measure 4), as embodied in Sections 15-70-502, 15-70-503, and 15-70-522 of the Montana Annotated Code, and Administrative Rules of Montana, Sections 18.15.701 – 18.15.703 and 18.15.710 – 18.15-712;
- d) the Montana tax credit (Measure 5), as embodied in Section 15-32-703 of the Montana Annotated Code;
- e) the Montana tax refund (Measure 6), as embodied in Section 15-70-433 of the Montana Annotated Code;
- f) the Connecticut additional incentive (Measure 7), as embodied in Section 16-245ff of the General Statutes of Connecticut, and Request for Qualification for Eligible Contractors and Third Party PV System Owners;
- g) the Michigan Equipment and Labour Multipliers (Measure 8), as embodied in Public Act No. 342;
- h) the Delaware Equipment and Workforce Bonuses (Measure 9), as embodied in Sections 356(d) and (e) of the Renewable Energy Portfolio Standards Act, and Rules and Procedures to Implement the Renewable Energy Portfolio Standard;
- i) the Minnesota solar photovoltaic rebate under Measure 10, as embodied in Section 116C.7791 of the 2016 Minnesota Statutes; and
- j) the Minnesota solar energy production incentive (SEPI) program under Measure 10, as embodied in Sections 216C.411 – 216C.415 of the 2016 Minnesota Statutes, to the extent that incentive payments under this program continue following its repeal.