

establishes that China applies ordinary customs duties in excess of those set forth in its Schedule in respect of 123 of the 128 tariff lines covered by the additional duties measure.³⁰⁴

7.157. Accordingly, the Panel finds that the United States has demonstrated that the additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 because it results in the imposition of ordinary customs duties on 123 tariff lines in excess of the bound rates set forth in China's Schedule.

7.4.2.3 Whether the additional duties measure is inconsistent with Article II:1(a) of the GATT 1994

7.158. As noted above, where a measure violates Article II:1(b) of the GATT 1994, it is necessarily inconsistent with Article II:1(a) as well. This is so because, where a Member imposes duties or charges on imports in excess of those set forth in its schedule, it *ipso facto* accords to those imports treatment less favourable than that provided for in its schedule.³⁰⁵

7.159. Having found that the United States has demonstrated that the additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 because it imposes ordinary customs duties on 123 tariff lines in excess of the bound rates set forth in China's Schedule, the Panel also finds that the United States has demonstrated that the additional duties measure is inconsistent with Article II:1(a) of the GATT 1994 because it accords to those imports treatment less favourable than that provided for in China's Schedule.

7.4.3 Conclusion

7.160. For the reasons outlined above, the Panel finds that the additional duties measure is inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994.

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, the Panel concludes:

- a. Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to China's additional duties measure. Accordingly, the application of Articles I and II of the GATT 1994 is not suspended in relation to that measure.
- b. Regarding the United States' claim under Article I:1 of the GATT 1994:
 - i. China's additional duties measure is inconsistent with Article I:1 of the GATT 1994 because, with respect to customs duties imposed on or in connection with importation, it fails to accord an advantage granted to products originating outside the United States immediately and unconditionally to products originating in the United States.
- c. Regarding the United States' claims under Articles II:1(a) and II:1(b) of the GATT 1994:
 - i. China's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 because it results in the imposition of ordinary customs duties on 123 tariff lines in excess of the bound rates set forth in China's Schedule.
 - ii. China's additional duties measure is inconsistent with Article II:1(a) of the GATT 1994 because it imposes ordinary customs duties on United States-origin imports in excess of those set forth in China's Schedule, thus according to those imports treatment less favourable than that provided for in China's Schedule.

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

³⁰⁴ The five tariff lines that China does not impose ordinary customs duties in excess of those set forth in its Schedule are 08028000, 08029090, 08044000, 08104000, and 08109030.

³⁰⁵ Appellate Body Report, *Argentina – Textiles and Apparel*, para. 47.

nullification or impairment. The Panel concludes that, to the extent that China's additional duties measure is inconsistent with certain provisions of the GATT 1994, it has nullified or impaired benefits accruing to the United States under that Agreement.

8.3. Pursuant to Article 19.1 of the DSU, the Panel recommends that China bring its WTO-inconsistent measure into conformity with its obligations under the GATT 1994.
