

VIII. CONCLUSIONS AND RECOMMENDATION

8.1 On the basis of the above findings, we conclude that:

- (a) The United States waiver provisions under Section 751(c)(4)(B) of the Tariff Act, operating in conjunction with Section 751(c)(4)(A) of the Tariff Act and Section 351.218(d)(2) of the Regulations, remain *inconsistent* with Article 11.3 of the Agreement,
- (b) The USDOC did *not* act *inconsistently* with Articles 11.3 and 11.4 of the Agreement by developing a *new* factual basis for its Section 129 Determination,
- (c) The USDOC acted *inconsistently* with Article 11.3 of the Agreement as the Section 129 Determination that dumping was likely to continue or recur lacked a sufficient factual basis with regard to its analysis of both (1) likely past dumping and (2) volume,
- (d) The USDOC did *not* act *inconsistently* with Articles 6.1 and 6.2 of the Agreement in the sunset review at issue with regard to providing Argentine exporters with ample opportunity to present in writing all evidence which they considered relevant and with regard to giving them a full opportunity for the defence of their interests,
- (e) The USDOC acted *inconsistently* with Article 6.4 of the Agreement in the sunset review at issue by not giving the Argentine exporters timely opportunities to see certain information that the USDOC used in its Section 129 Determination,
- (f) The USDOC acted *inconsistently* with Article 6.5.1 of the Agreement by not requiring a petitioner submitting confidential information to submit a non-confidential summary thereof,
- (g) The USDOC did *not* act *inconsistently* with Article 6.6 of the Agreement with regard to satisfying itself as to the accuracy of the cost data submitted by Siderca in the sunset review at issue,
- (h) The USDOC did *not* act *inconsistently* with the Article 6.9 obligation to disclose essential facts.

8.2 Since the original DSB recommendations and rulings in 2004 remain operative, we make no new recommendation.¹⁰²

¹⁰² After identifying its specific claims against the United States, Argentina argued, at the very end of its request for establishment, that with regard to all the measures identified in the request, the United States also acted inconsistently with Articles 1 and 18.1 of the Anti-dumping Agreement and Article XVI:4 of the WTO Agreement. However, Argentina did not pursue these claims in its submissions to the Panel. Given the consequential nature of these claims and considering that Argentina did not pursue them in these proceedings, we do not consider that Argentina has established its claim under these provisions and we do not make any findings in this regard. More generally, we note that in its request for establishment, Argentina cited certain other provisions of the Anti-dumping Agreement, such as Article 12.2, which it then did not pursue. We therefore consider that Argentina has abandoned these claims.

IX. REMEDY

A. ARGUMENTS OF PARTIES

1. Argentina

9.1 Argentina requests that the Panel suggest that the United States bring its measures into conformity with its WTO obligations by revoking the anti-dumping order at issue.

2. United States

9.2 The United States disagrees with Argentina that a suggestion by the Panel about the revocation of the order would be proper in these proceedings.

B. ARGUMENTS OF THIRD PARTIES

1. Mexico

9.3 Mexico submits that the Panel should use its authority under Article 19.1 of the DSU to ask the United States to bring its measure into conformity with its WTO obligations by revoking the duty at issue.

C. EVALUATION BY THE PANEL

9.4 We note that Article 19.1 of the DSU states that WTO panels may suggest ways through which the Member concerned could implement their recommendations.¹⁰³ In the circumstances of the present proceedings, however, we see no particular reason to make such a suggestion and therefore decline Argentina's request.

¹⁰³ Article 19.1 of the DSU reads:

Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement. In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations. (footnotes omitted).