

VII. Findings and Conclusions

263. For the reasons set forth in this Report, the Appellate Body:

- (a) with respect to the administrative reviews at issue in this case:
 - (i) reverses the Panel's finding, in paragraphs 7.288 and 8.1(f) of the Panel Report, that the United States did not act inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994, and finds, instead, that the United States acted inconsistently with those provisions;
 - (ii) finds it unnecessary, for purposes of resolving this dispute, to rule on whether the United States acted inconsistently with the obligation contained in the first sentence of Article 2.4 of the *Anti-Dumping Agreement* to make a "fair comparison" between the export price and normal value;
 - (iii) upholds the Panel's finding, in paragraph 7.280 of the Panel Report, that zeroing is not an impermissible allowance or adjustment under Article 2.4 of the *Anti-Dumping Agreement*, third to fifth sentences;
 - (iv) declines to rule on the European Communities' conditional appeal under Article 2.4.2 of the *Anti-Dumping Agreement*;
 - (v) upholds the Panel's finding, in paragraphs 7.288 and 8.1(f) of the Panel Report, that the United States did not act inconsistently with Articles 11.1 and 11.2 of the *Anti-Dumping Agreement*;
 - (vi) finds it unnecessary, for purposes of resolving this dispute, to rule on whether the zeroing methodology, as applied in the administrative reviews at issue, is inconsistent with Articles 1 and 18 of the *Anti-Dumping Agreement* and Article XVI:4 of the *WTO Agreement*; and
 - (vii) declares moot the Panel's finding, in paragraphs 7.288 and 8.1(f) of the Panel Report, that the United States did not act inconsistently with Article VI:1 of the GATT 1994; and the Panel's finding, in paragraphs 7.284 and 8.1(e) of the Panel Report, that the United States did not act inconsistently with the first sentence of Article 2.4 of the *Anti-Dumping Agreement*;

- (b) finds, albeit for reasons different from those set out by the Panel, that the zeroing methodology, as it relates to original investigations in which the weighted-average-to-weighted-average comparison method is used to calculate margins of dumping, can be challenged, as such, in WTO dispute settlement; and upholds the Panel's conclusion, in paragraphs 7.106 and 8.1(c) of the Panel Report, that this methodology is inconsistent, as such, with Article 2.4.2 of the *Anti-Dumping Agreement*;
- (c) with respect to the zeroing methodology, as it relates to administrative reviews:
 - (i) declares moot the Panel's finding, in paragraph 8.1(g) of the Panel Report, that the zeroing methodology, as it relates to administrative reviews is not inconsistent, as such, with Articles 1, 2.4, 2.4.2, 9.3, 11.1, 11.2, and 18.4 of the *Anti-Dumping Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the *WTO Agreement*; and
 - (ii) finds that it is unable to complete the analysis to determine whether the zeroing methodology, as it relates to administrative reviews, is inconsistent, as such, with Articles 1, 2.4, 2.4.2, 9.3, 11.1 and 11.2, and 18.4 of the *Anti-Dumping Agreement*, Articles VI:1 and VI:2 of the GATT 1994, and Article XVI:4 of the *WTO Agreement*;
- (d) finds that the Standard Zeroing Procedures are not a measure than can be challenged, as such, and, accordingly, declares moot the Panel's finding, in paragraphs 7.291, 7.294, 8.1(g), and 8.1(h) of the Panel Report, that the Standard Zeroing Procedures are not inconsistent, as such, with Articles 1, 2.4, 2.4.2, 9.3, 11.1, 11.2, and 18.4 of the *Anti-Dumping Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the *WTO Agreement*;
- (e) finds that the Panel did not err in exercising judicial economy by not making findings with regard to whether the Anti-Dumping Manual is a measure that is inconsistent, as such, with Articles 1, 2.4, 2.4.2, 5.8, 9.3, 9.5, 11.1, 11.2, 11.3, and 18.4 of the *Anti-Dumping Agreement*, Articles VI:1 and VI:2 of the GATT 1994, and Article XVI:4 of the *WTO Agreement*;
- (f) declines to rule on the European Communities' conditional appeal regarding the United States' "practice" of zeroing;

- (g) with respect to Section 351.414(c)(2):
- (i) declares moot the Panel's finding, in paragraphs 7.291, 7.294, 8.1(g), and 8.1(h) of the Panel Report, that Section 351.414(c)(2) is not inconsistent, as such, with Articles 1, 2.4, 2.4.2, 9.3, 9.5, 11.1, 11.2, 11.3, and 18.4 of the *Anti-Dumping Agreement*, Articles VI:1 and VI:2 of the GATT 1994, and Article XVI:4 of the *WTO Agreement*;
 - (ii) declines to complete the analysis to decide whether Section 351.414(c)(2) is inconsistent, as such, with Articles 1, 2.4, 2.4.2, 9.3, 9.5, 11.1, 11.2, 11.3 and 18.4 of the *Anti-Dumping Agreement*, Articles VI:1 and VI:2 of the GATT 1994, and Article XVI:4 of the *WTO Agreement*; and
- (h) finds that the Panel did not err in exercising judicial economy by not making findings on whether administrative review proceedings based on model zeroing are inconsistent with Article 9.3 of the *Anti-Dumping Agreement*;
- (i) finds that the Panel did not err in exercising judicial economy by not making findings on whether zeroing "as applied" in the original investigations at issue is inconsistent with Article 2.4 of the *Anti-Dumping Agreement*; and
- (j) rejects the European Communities' claim that the Panel acted inconsistently with its obligations under Article 11 of the DSU by failing to make an objective assessment of the matter before it, including an objective assessment of the facts of the case.

264. The Appellate Body recommends that the DSB request the United States to bring its measures, which have been found in this Report, and in the Panel Report as modified by this Report, to be inconsistent with the *Anti-Dumping Agreement* and with the GATT 1994, into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 31st day of March 2006 by:

Giorgio Sacerdoti
Presiding Member

Merit E. Janow
Member

Yasuhei Taniguchi
Member