

IX. CONCLUSIONS AND RECOMMENDATION

9.1 In accordance with our mandate under Article 21.5 of the DSU, we have examined the existence or consistency with a covered agreement of measures taken by the United States to comply with the recommendations and rulings adopted by the DSB in the original proceeding. On the basis of the findings above, we conclude that:

- (a) We have no authority to make findings with respect to the EC claim that the Panel was improperly constituted under Articles 8.3 and 21.5 of the DSU and therefore refrain from doing so.
- (b) With respect to the EC general claims of failure, by the United States, to fully implement the recommendations and rulings of the DSB in the original dispute:
 - (i) The United States has failed to comply with the recommendations and rulings of the DSB in the original dispute and has acted inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 by determining, after the end of the reasonable period of time, the amount of anti-dumping duty to be assessed based on zeroing in the 2004-2005 administrative review in case 1 (*Hot Rolled Steel from the Netherlands*) and issuing assessment instructions pursuant to that determination and by determining, after the end of the reasonable period of time, the amount of anti-dumping duty to be assessed based on zeroing in the 2004-2005 administrative review in case 6 (*Stainless Steel Wire Rod from Sweden*) and issuing assessment instructions pursuant to that determination.
 - (ii) The United States has failed to comply with the recommendations and rulings of the DSB in the original dispute by continuing to apply to imports of NSK cash deposit rates established in the 2000-2001 administrative review in case 31 (*Ball Bearings from the United Kingdom*), a measure which was found to be inconsistent with Articles 9.3 of the *Anti-Dumping Agreement* and VI:2 of the GATT 1994 in the original dispute.
 - (iii) The United States has not failed to comply with the recommendations and rulings of the DSB in the original dispute by taking actions to liquidate anti-dumping duties calculated with zeroing pursuant to final duty assessment determinations made before the end of the reasonable period of time (including pursuant to subsequent administrative reviews listed in the Annex to the EC Article 21.5 panel request).
 - (iv) The United States has not failed to comply with the recommendations and rulings of the DSB in the original dispute by determining, prior to the end of the reasonable period of time, the amount of anti-dumping duty to be assessed based on zeroing in the 2005-2006 administrative review determination in case 1 (*Hot Rolled Steel from the Netherlands*).
 - (v) The United States has not failed to comply with the recommendations and rulings of the DSB in the original dispute and has not acted inconsistently with Articles 2.4.2 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 by establishing a new cash deposit rate based on zeroing

"the maximum anti-dumping duty" that may be applied to exports from producers not individually examined in Appellate Body Report, *EC – Bed Linen (Article 21.5 – India)*, para. 122.

in the 2004-2005 administrative review determination in case 6 (*Stainless Steel Wire Rod from Sweden*) because due to the revocation of the measure in question, no cash deposit requirement was actually imposed.

- (vi) Having found that none of the sunset reviews with respect to which the European Communities makes claims and which are within our terms of reference had, by the time of the establishment of the Panel, resulted in the continuation of the concerned anti-dumping orders, we make no findings in respect of the claims of the European Communities that the United States violated Articles 2.1, 2.4, 2.4.2 and 11.3 of the *Anti-Dumping Agreement* as a result of having relied on margins of dumping calculated with zeroing in the context of sunset reviews involving measures challenged in the original dispute.
 - (vii) We make no findings with respect to the EC claim that the United States violated Articles 21.3 and 21.3(b) of the DSU by failing to take any measure to comply between 9 April and 23 April/31 August 2007.
- (c) With respect to the EC claims that certain US measures taken to comply are inconsistent with the US obligations under the covered agreements:
- (i) Having found that the claim of the European Communities with respect to the Section 129 determination in case 11 (*Stainless Steel Sheet and Strip in Coils from Italy*) concerning the calculation error is not properly before us, we make no findings on the consistency of that determination with Articles 2, 5.8, 6.8, 9.3, 11.1 and 11.3 of the *Anti-Dumping Agreement* and Article VI:2 of the *GATT 1994*.
 - (ii) With respect to cases 2, 3, 4 and 5 (*Stainless Steel Bar from France, Germany, Italy and the United Kingdom*), the United States acted inconsistently with Articles 3.1, 3.2 and 3.5 of the *Anti-Dumping Agreement* by maintaining the anti-dumping duty orders in those cases without having made a determination of injury based on positive evidence of the volume of dumped imports following the recalculation of dumping margins in the Section 129 determinations in these cases and consequent changes in the volume of dumped imports. We make no findings regarding the EC claims under Article 5.8 of the *Anti-Dumping Agreement* and Article VI:I of the *GATT 1994* in respect of the same measures.
 - (iii) With respect to cases 2, 4 and 5 (*Stainless Steel Bar from France, Italy and the United Kingdom*), the United States did not act inconsistently with Article 9.4 of the *Anti-Dumping Agreement* in the establishment of "all others" rates in the Section 129 determinations in these cases. We make no findings regarding the EC claims under Article 6.8 and Annex II of the *Anti-Dumping Agreement* in respect of these same measures.

9.2 To the extent that the measures taken by the United States to comply with the recommendations and rulings adopted by the DSB in the original proceeding are inconsistent with the obligations of the United States under the covered agreements, and to the extent that the United States has otherwise failed to implement the recommendations and rulings of the DSB in the original dispute, these recommendations and rulings of the DSB remain operative. We therefore make no new recommendation.

9.3 The European Communities requests that the Panel make suggestions as to how the United States should bring its measures into conformity with its obligations under the covered agreements.⁹²⁰ 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.⁹²¹ Having in this Report provided our views with respect to US actions taken, or not taken, to implement the rulings and recommendations in the original dispute, as well as on the scope of the US obligation to implement, we see no reason to make any suggestion to the United States and therefore decline the EC request.

⁹²⁰ See *supra*, para. 4.4 and footnote 50.

⁹²¹ Article 19.1 of the DSU provides that:

"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).