

VII. CONCLUSIONS AND RECOMMENDATION

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

- (a) The KTC acted inconsistently with Article 6.8 of the Agreement and paragraph 7 of Annex II by failing to exercise special circumspection in the use of information from secondary sources in its effort to base its determination of CMI's interest expenses on the best information available,
- (b) The KTC acted inconsistently with its obligation under Article 6.2 of the Agreement by declining to provide the Sinar Mas Group with an opportunity to make comments on the evaluation of the injury factors under Article 3.4,
- (c) Indonesia has failed to make a *prima facie* case with regard to its claims under Articles 6.4, 6.5 and 6.9 of the Agreement concerning the alleged disclosure violations in connection with the KTC's injury re-determination,
- (d) Indonesia has failed to make a *prima facie* case with regard to its claim on the alleged acceptance by the KTC of new information from the Korean industry.

7.2 We have applied judicial economy with regard to:

- (a) Indonesia's claim under Articles 2.2, 2.2.2, 2.4 and 2.1 of the Agreement regarding the KTC's determination of CMI's interest expenses on the basis of best information available,
- (b) Indonesia's claim under Articles 6.1, 6.2, 6.4, 6.6, 6.8 and Annex II of the Agreement concerning the alleged partial re-opening of the record on the issue of the scope of CMI's business.

7.3 We recall Indonesia's assertion that because of the alleged inconsistencies in the KTC's Re-determination, Korea has also failed to respect its obligation under Article 1 of the Anti-Dumping Agreement to ensure that an anti-dumping measure is applied only under the circumstances provided for in Article VI of the GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement. Given the dependent nature of this claim, we need not, and do not, make any findings in this regard.

7.4 Since the original DSB recommendations and rulings in 2005 remain operative, we make no new recommendation.

7.5 Indonesia notes that -notwithstanding our statement in our original panel report on this specific issue- in the calculation of CMI's financial expenses in the implementation proceedings at issue, the KTC disregarded the differences between the scope of business of the company whose information is missing and that of the company whose information is used represent the missing information. This paved the way for the continuation of the anti-dumping duties based on margins calculated through a WTO-inconsistent method. Indonesia therefore invites the Panel to suggest that Korea implement its findings in these compliance proceedings, as pointed out in Indonesia's letter to

Korea dated 8 December 2005¹⁶⁶, by basing CMI's interest expenses on April Fine's data in which case margins of dumping for Indah Kiat and Pindo Deli would become *de minimis* and termination of the duties inevitable. Korea has not specifically responded to Indonesia's request for a suggestion from the Panel for implementation.

7.6 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.¹⁶⁷ With regard to Indonesia's request for a suggestion, however, we recall that our task is to assess whether the KTC's determination was proper, not to make suggestions as to which information it should have used or it should use in the implementation of the DSB recommendations and rulings following these compliance proceedings. We therefore decline to make the suggestion proposed by Indonesia.

¹⁶⁶ Exhibit IDN-2.

¹⁶⁷ 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)