

VIII. Findings and Conclusions

350. For the reasons set out in this Report, the Appellate Body:

- (a) upholds the Panel's finding, in paragraph 7.43 of the Panel Report, that the claims in the United States' panel request, which were not "indicat[ed]" in the request for consultations, did not fall outside the Panel's terms of reference;
- (b) with respect to Economía's injury determination:
 - (i) finds that the Panel did not exceed its terms of reference in concluding, in paragraphs 7.65 and 8.1(a) of the Panel Report, that Economía's use of a period of investigation ending in August 1999 was inconsistent with Articles 3.1, 3.2, 3.4, and 3.5 of the *Anti-Dumping Agreement*;
 - (ii) upholds the Panel's findings, in paragraphs 7.65 and 8.1(c) of the Panel Report, that Economía's use of a period of investigation ending in August 1999 resulted in a failure to make a determination of injury based on "positive evidence", as required by Article 3.1 of the *Anti-Dumping Agreement*, and that, as a consequence, Mexico acted inconsistently with Articles 3.2, 3.4, and 3.5 of that Agreement;
 - (iii) upholds the Panel's findings, in paragraphs 7.86 and 8.1(b) of the Panel Report, that, in limiting the injury analysis to the March to August period of 1997, 1998, and 1999, Mexico failed to make a determination of injury that involves an "objective examination", as required by Article 3.1 of the *Anti-Dumping Agreement*, and that, as a consequence, Mexico acted inconsistently with Article 3.5 of that Agreement; and
 - (iv) upholds the Panel's findings, in paragraphs 7.116 and 8.1(c) of the Panel Report, that Economía's injury analysis with respect to the volume and price effects of dumped imports was inconsistent with Articles 3.1 and 3.2 of the *Anti-Dumping Agreement*;
- (c) with respect to Economía's dumping determination:
 - (i) upholds the Panel's findings, in paragraphs 7.145 and 8.3(a) of the Panel Report, that Mexico did not terminate immediately the investigation in respect of Farmers Rice and Riceland because Economía did not exclude

- them from the application of the definitive anti-dumping measure, and, therefore, acted inconsistently with Article 5.8 of the *Anti-Dumping Agreement*;
- (ii) finds that the Panel did not exceed its terms of reference in concluding, in paragraphs 7.168 and 8.3(b) of the Panel Report, that Economía calculated a margin of dumping on the basis of the facts available for Producers Rice in a manner inconsistent with Article 6.8 of the *Anti-Dumping Agreement*, read in the light of paragraph 7 of Annex II to that Agreement;
 - (iii) reverses the Panel's findings, in paragraphs 7.200, 7.201, and 8.3(c) of the Panel Report, that, with respect to the exporters that Economía did not investigate, Mexico acted inconsistently with Articles 6.1, 6.10, and 12.1 of the *Anti-Dumping Agreement*; and
 - (iv) upholds the Panel's findings, in paragraphs 7.200 and 8.3(c) of the Panel Report, that, by applying the facts available contained in the application submitted by the petitioner in calculating the margin of dumping for those United States exporters Economía did not investigate, Mexico acted inconsistently with paragraph 1 of Annex II to the *Anti-Dumping Agreement* and, therefore, with Article 6.8 of that Agreement; and
- (d) with respect to the provisions of the Foreign Trade Act of Mexico (the "FTA"):
- (i) finds that the Panel did not err in considering that a *prima facie* case had been made out concerning the consistency of the challenged provisions of the FTA with Mexico's obligations under the *Anti-Dumping Agreement* and the *SCM Agreement*;
 - (ii) finds that the Panel did not disregard Article 2 of the FTA, or Mexico's argument in relation thereto, in concluding that the challenged provisions of the FTA are mandatory measures;
 - (iii) upholds the Panel's findings, in paragraphs 7.223, 7.225, and 8.5(a) of the Panel Report, that Article 53 of the FTA is inconsistent, as such, with Article 6.1.1 of the *Anti-Dumping Agreement* and Article 12.1.1 of the *SCM Agreement*;

- (iv) upholds the Panel's findings, in paragraphs 7.242 and 8.5(b) of the Panel Report, that Article 64 of the FTA is inconsistent, as such, with Article 6.8 of the *Anti-Dumping Agreement*, paragraphs 1, 3, 5, and 7 of Annex II thereto, and Article 12.7 of the *SCM Agreement*;
- (v) upholds the Panel's findings, in paragraphs 7.251, 7.260, and 8.5(c) of the Panel Report, that Article 68 of the FTA is inconsistent, as such, with Articles 5.8, 9.3, and 11.2 of the *Anti-Dumping Agreement*, and Articles 11.9 and 21.2 of the *SCM Agreement*;
- (vi) upholds the Panel's findings, in paragraphs 7.269 and 8.5(d) of the Panel Report, that Article 89D of the FTA is inconsistent, as such, with Article 9.5 of the *Anti-Dumping Agreement* and Article 19.3 of the *SCM Agreement*;
- (vii) finds that, in its interpretation of Article 93V of the FTA, the Panel did not fail to fulfil its obligations under Article 11 of the DSU; and
- (viii) upholds the Panel's findings, in paragraphs 7.297 and 8.5(f) of the Panel Report, that Articles 68 and 97 of the FTA, read together, are inconsistent, as such, with Articles 9.3.2 and 11.2 of the *Anti-Dumping Agreement* and Article 21.2 of the *SCM Agreement*.

351. The Appellate Body recommends that the Dispute Settlement Body request Mexico to bring its measures, found in this Report and in the Panel Report as modified by this Report, to be inconsistent with the *Anti-Dumping Agreement* and the *SCM Agreement*, into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 10th day of November 2005 by:

John Lockhart
Presiding Member

Georges Abi-Saab
Member

Yasuhei Taniguchi
Member