

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 In light of the findings contained in Section VII above, we therefore conclude that:

- (a) the affirmative likelihood-of-subsidization re-determinations set out in each of the Section 129 determinations at issue are the measures taken to comply by the United States with the DSB recommendations and rulings in the original proceedings;
- (b) regarding the UK and Spain Section 129 determinations, the European Communities' claims on the treatment of evidence in the likelihood-of-subsidization analyses are properly before this Panel;
- (c) regarding all three Section 129 determinations, the European Communities' claims on the failure to re-determine the likelihood of continuation or recurrence of injury are not properly before this Panel;
- (d) regarding the France Section 129 determination, since the USDOC did not fail to examine the conditions of Usinor's privatization and did not fail to determine that the privatized Usinor continued to receive some benefit from pre-privatization subsidization of the state-owned Usinor, the United States did not act inconsistently with Articles 14 and 21.3 of the *SCM Agreement* as regards the USDOC's consideration of Usinor's privatization in its likelihood-of-subsidization analysis.

In the absence of an obligation to recalculate a rate of subsidization in the context of a sunset review and given the fact that the United States is not relying on the sunset review as a basis for collecting duties at a particular rate, the Panel finds that the USDOC's affirmative likelihood-of-subsidization re-determination as set out in the France Section 129 determination is not inconsistent with Articles 10, 14, 19.4, 21.1 and 21.3 of the *SCM Agreement* and Article VI:3 of the *GATT 1994* in regard to the obligation to limit countervailing duties to the amount and duration of the subsidy and therefore, the United States has not failed to implement the recommendations and rulings of the DSB;

- (e) regarding the UK Section 129 determination, the USDOC failed to examine whether the privatization of BS plc was at arm's length and for FMV and failed to determine whether the privatized producer received any benefit from the prior non-recurring subsidization of the state-owned BS plc. By failing to properly determine the likelihood of continuation or recurrence of subsidization, prior to its decision to maintain countervailing duties, the United States acted inconsistently with Articles 10, 14, 19.4, 21.1 and 21.3 of the *SCM Agreement* and Article VI:3 of the *GATT 1994* and therefore failed to implement the recommendations and rulings of the DSB;
- (f) regarding the Spain Section 129 determination, the USDOC failed to examine whether the privatization of Aceralia was at arm's length and for FMV and failed to determine whether the privatized producer received any benefit from the prior non-recurring subsidization of the state-owned Aceralia. By failing to properly determine the likelihood of continuation or recurrence of subsidization, prior to its decision to maintain countervailing duties, the United States acted inconsistently with Articles 10, 14, 19.4, 21.1 and 21.3 of the *SCM Agreement* and Article VI:3 of the *GATT 1994* and therefore failed to implement the recommendations and rulings of the DSB;

- (g) regarding the UK Section 129 determination, the USDOC's refusal to re-consider evidence that it had already considered and rejected during the original sunset review is not inconsistent with Article 21.3 of the *SCM Agreement*;
- (h) regarding the UK Section 129 determination, the USDOC's refusal to consider new evidence submitted during the UK Section 129 proceedings is inconsistent with the obligations under Article 21.3 of the *SCM Agreement*;
- (i) regarding the Spain Section 129 determination, the European Communities failed to demonstrate that the USDOC's treatment of evidence in the Spain Section 129 determination is inconsistent with Article 21.3 of the *SCM Agreement*.

8.2 Since Article 3.8 of the *DSU* provides that "[i]n cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment", we conclude that to the extent the United States has acted inconsistently with the *SCM Agreement* and the *GATT 1994* it has nullified or impaired the benefits accruing to the European Communities under those agreements.

8.3 The Panel *recommends* that the Dispute Settlement Body requests the United States to bring its measures into conformity with its obligations under the *SCM Agreement* and the *GATT 1994*.

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