

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 In light of the above findings, we conclude that:

- (a) In respect of the KTC's dumping determination:
 - (i) The KTC did not act inconsistently with Article 6.8 of the Agreement in resorting to facts available with respect to Indah Kiat and Pindo Deli,
 - (ii) The KTC did not act inconsistently with Article 6.8 of the Agreement and paragraph 3 of Annex II in disregarding domestic sales data submitted by Indah Kiat and Pindo Deli,
 - (iii) The KTC did not act inconsistently with Article 6.8 of the Agreement and paragraph 6 of Annex II with respect to informing Indah Kiat and Pindo Deli of its decision to reject their domestic sales data and giving them an opportunity to provide further explanations,
 - (iv) The KTC did not act inconsistently with Article 2.2 of the Agreement by using constructed normal values for Indah Kiat and Pindo Deli,
 - (v) The KTC acted inconsistently with Article 6.8 of the Agreement and paragraph 7 of Annex II with regard to exercising special circumspection in its use of information from secondary sources instead of domestic sales data provided by Indah Kiat and Pindo Deli,
 - (vi) The KTC acted inconsistently with Article 6.8 of the Agreement and paragraph 7 of Annex II, but did not act inconsistently with Article 6.8 of the Agreement and paragraph 6 of Annex II with respect to determining Tjiwi Kimia's margin of dumping,
 - (vii) The KTC did not act inconsistently with Article 2.4 of the Agreement with respect to the alleged difference stemming from CMI's involvement in domestic sales of Indah Kiat and Pindo Deli, which allegedly affected price comparability,
 - (viii) The KTC did not act inconsistently with Articles 6.10 and 9.3 of the Agreement by treating the three Sinar Mas Group companies as a single exporter and assigning a single margin of dumping to them,
 - (ix) The KTC acted inconsistently with Article 6.7 of the Agreement with respect to the disclosure of the verification results,
 - (x) The KTC acted inconsistently with Article 6.4 of the Agreement with regard to disclosing details of the calculations of the constructed normal values for Indah Kiat and Pindo Deli,
 - (xi) Indonesia failed to make a *prima facie* case with respect to its claim under Article 12.2 of the Agreement with regard to the KTC's alleged failure to disclose details of the calculations of the constructed normal values for Indah Kiat and Pindo Deli,

- (xii) The KTC did not act inconsistently with Articles 2.6, 3.1, 3.2, 3.4, 3.5 and 3.7 of the Agreement of the Agreement with respect to its like product definition,
- (b) In respect of the KTC's injury determination:
- (i) The KTC did not act inconsistently with Articles 3.1, 3.2 and 3.4 of the Agreement with respect to its price analysis,
 - (ii) The KTC acted inconsistently with Article 3.4 of the Agreement with respect to its assessment of the impact of dumped imports on the domestic industry,
 - (iii) The KTC did not act inconsistently with Articles 3.4 and 3.5 of the Agreement with regard to the treatment of the dumped imports made by the Korean producers from the subject countries,
 - (iv) The KTC did not act inconsistently with Articles 6.2, 6.4 and 12.2 of the Agreement with respect to disclosing the results of the technical test carried out by the Korean Agency for Technology and Standards and those of a customer survey, and did not act inconsistently with Articles 6.4 and 6.9 of the Agreement with respect to disclosing its determination concerning the effect of the prices of dumped imports on the Korean industry,
 - (v) The KTC acted inconsistently with Article 6.5 of the Agreement by not requiring that good cause for confidential treatment be shown with respect to the information submitted in the application which was by nature confidential,
- (c) We decline to address the following claims on the grounds of judicial economy:
- (i) Alleged violation by the KTC of Article 5.8 of the Agreement by not terminating the investigation *vis-à-vis* Indah Kiat,
 - (ii) Alleged violation by the KTC of its disclosure obligations under Article 6.9 of the Agreement with respect to its dumping determinations,
 - (iii) Alleged violation by the KTC of Articles 3.1 and 3.5 of the Agreement with respect to its causation analysis,
 - (iv) Alleged violation by the KTC of Articles 3.1, 3.2 and 3.5 of the Agreement by treating imports from Indah Kiat as dumped imports,
 - (v) Alleged violation by the KTC of Article 6.9 of the Agreement with respect to disclosing the results of the technical test carried out by the Korean Agency for Technology and Standards and those of a customer survey,
 - (vi) Alleged consequent violation by the KTC of Article 1 of the Agreement stemming from the violations of the provisions of the Agreement cited in connection with Indonesia's specific claims,
- (d) We do not address the following claims because they have been withdrawn by Indonesia:

- (i) Alleged violation by the KTC of Articles 6.1, 6.4 and 6.9 of the Agreement by not giving the Indonesian exporters an opportunity to see, and comment on, the data relating to the first half of 2003,
 - (ii) Alleged violation by the KTC of Articles 6.4 and 6.9 of the Agreement by failing to inform the Indonesian exporters of its decision to change the basis of its injury determination from threat to material injury,
- (e) We do not address Indonesia's claim under Articles 3.1 and 3.2 of the Agreement regarding the KTC's analysis of the volume of dumped imports as we have found that claim not to be within our terms of reference.

8.2 Under Article 3.8 of the DSU, in 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 of benefits under that agreement. Accordingly, we conclude that, to the extent Korea has acted inconsistently with the provisions of the Anti-dumping Agreement, it has nullified or impaired benefits accruing to Indonesia under that agreement. We therefore recommend that the Dispute Settlement Body request Korea to bring its measures mentioned in paragraph 8.1(a)(v), 8.1(a)(vi), 8.1(a)(ix), 8.1(a)(x), 8.1(b)(ii) and 8.1(b)(v) above into conformity with its obligations under the WTO Agreement.

IX. ARTICLE 19.1 OF THE DSU

9.1 Indonesia requests that we use our discretion under article 19.1 of the DSU to suggest that Korea implement our recommendation in this case by revoking the measure at issue. Korea did not specifically respond to this request.

9.2 We note that Article 19.1 of the DSU provides:

"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)

9.3 We note that the general rule under Article 19.1 of the DSU with respect to the recommendations of WTO panels is to recommend that the Member concerned bring its measure into conformity with the relevant provisions of the covered agreements at issue. Exceptionally, Article 19.1 also authorizes the panels to suggest ways in which such recommendations could be implemented.

9.4 Taking into account the circumstances of the proceedings at issue, we see no reason to depart from the general rule and make a suggestion regarding implementation. We therefore decline Indonesia's request.
