

IX. Findings and Conclusions

190. For the reasons set forth in this Report, the Appellate Body:

- (a) upholds the Panel's finding, in paragraph 7.58 of the Panel Report, that the United States' "zeroing procedures" constitute a measure which can be challenged as such and, therefore, dismisses the United States' claim that the Panel acted inconsistently with Article 11 of the DSU by concluding that the zeroing procedures, as they relate to original investigations based on transaction-to-transaction and weighted average normal value-to-prices of individual export transactions comparisons, constitute a measure that can be challenged, as such, in WTO dispute settlement;
- (b) reverses the Panel's finding, in paragraphs 7.143, 7.161, and 7.259(a) of the Panel Report, that the United States does not act inconsistently with Articles 2.1, 2.4, and 2.4.2 of the *Anti-Dumping Agreement* and Articles VI:1 and VI:2 of the GATT 1994, and finds, instead, that the United States acts inconsistently with Articles 2.4 and 2.4.2 of the *Anti-Dumping Agreement* by maintaining zeroing procedures when calculating margins of dumping on the basis of transaction-to-transaction comparisons in original investigations;
- (c) reverses the Panel's findings, in paragraphs 7.216, 7.219, 7.222, and 7.259(b) of the Panel Report, that the United States does not act inconsistently with Articles 2.1, 2.4, and 9.1-9.3 of the *Anti-Dumping Agreement* and Articles VI:1 and VI:2 of the GATT 1994, and finds, instead, that the United States acts inconsistently with Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 by maintaining zeroing procedures in periodic reviews;
- (d) reverses the Panel's findings, in paragraphs 7.216, 7.219, 7.222 and 7.259(b) of the Panel report, that the United States does not act inconsistently with Articles 2.1, 2.4, and 9.5 of the *Anti-Dumping Agreement* and Articles VI:1 and VI:2 of the GATT 1994, and finds, instead, that the United States acts inconsistently with Articles 2.4 and 9.5 of the *Anti-Dumping Agreement* by maintaining zeroing procedures in new shipper reviews;
- (e) reverses the Panel's findings, in paragraphs 7.227 and 7.259(c) of the Panel Report, that the United States did not act inconsistently with Articles 2.1, 2.4, and 9.1-9.3 of the *Anti-Dumping Agreement* and Articles VI:1 and VI:2 of the GATT 1994, and

⁴¹²See Panel Report, para. 7.142. See also United States' appellee's submission, paras. 30 and 34.

finds, instead, that the United States acted inconsistently with Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 by applying zeroing procedures in the 11 periodic reviews at issue in this appeal;

- (f) reverses the Panel's finding, in paragraphs 7.257 and 7.259(e) of the Panel Report, that the United States did not act inconsistently with Articles 2 and 11 of the *Anti-Dumping Agreement* in the sunset reviews at issue in this appeal, when it relied on margins of dumping calculated in previous proceedings through the use of zeroing, and finds, instead, that the United States acted inconsistently with Article 11.3 of the *Anti-Dumping Agreement*.

191. The Appellate Body recommends that the DSB request the United States 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 with the GATT 1994, into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 14th day of December 2006 by:

Giorgio Sacerdoti
Presiding Member

Georges Abi-Saab
Member

A.V. Ganesan
Member