

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 For the reasons set out above, we conclude that Mexico's definitive countervailing measures on olive oil from the European Communities are inconsistent with the requirements of the *SCM Agreement*, in that:

- (a) Mexico acted inconsistently with Article 11.11 of the *SCM Agreement* because Economía's investigation in this case was concluded more than 18 months after the date of its initiation, and Article 11.11 does not permit such prolongation under any circumstances;
- (b) Mexico acted inconsistently with Article 12.4.1 of the *SCM Agreement* because Economía failed to require non-confidential summaries of confidential information in sufficient detail to permit a reasonable understanding of the information submitted in confidence, in the absence of sufficient explanations of the existence of exceptional circumstances and of the reasons why summarization was not possible; and
- (c) Mexico acted inconsistently with the obligation in Article 15.1 of the *SCM Agreement* to base the injury determination on positive evidence and pursuant to an objective examination because Economía limited its injury analysis to the periods from April to December of 2000, 2001 and 2002.

8.2 For the reasons set out above, we further conclude that:

- (a) the European Communities did not establish that Mexico acted inconsistently with its obligations in Article 13.1 of the *SCM Agreement* by failing to invite the European Communities for consultations before the initiation of the investigation;
- (b) The European Communities did not establish that Mexico failed to comply with the requirement in Article 13(b)(i) of the *Agreement on Agriculture* to exempt olive oil from imposition of countervailing duties "unless a determination of injury or threat thereof is made in accordance with Article VI of GATT 1994 and Part V of the Subsidies Agreement", and did not establish that Economía failed to show due restraint in initiating the countervailing duty investigation on olive oil;
- (c) the European Communities did not establish that Mexico acted inconsistently with its obligations under Article 12.8 of the *SCM Agreement* by failing to inform the interested Members and interested parties of the essential facts under consideration which formed the basis for the decision to apply definitive measures;
- (d) the European Communities did not establish that Mexico acted inconsistently with its obligations under Articles 1 and 14 of the *SCM Agreement* by failing to calculate the benefit conferred on the recipient pursuant to paragraph 1 of Article 1 of the *SCM Agreement* and to apply the method used to each particular case in a transparent way which is adequately explained as required by Article 14 of the *SCM Agreement*;
- (e) the European Communities did not establish that Mexico acted inconsistently with its obligation under Article 16.1 of the *SCM Agreement* by failing to properly define the domestic industry during the countervailing duty investigation consequently the European Communities also failed to establish that:
 - (1) Mexico acted inconsistently with the obligation in Article VI:6(a) of the *GATT 1994* to not impose countervailing duties on a product unless a determination

had been made that there was material injury or threat thereof to an established domestic industry;

(2) Mexico acted inconsistently with its obligations in Article 11.4 of the *SCM Agreement* by failing to properly examine whether the application by Fortuny was made "by or on behalf of the domestic industry"; and

(3) Because there was no existing domestic industry the injury analysis conducted pursuant to the obligations in Articles 15.1, 15.4 and 15.5 was inconsistent with the requirements of those provisions.

(f) the European Communities did not establish that Mexico acted inconsistently with its obligations under Article 15.5 of the *SCM Agreement* by failing to properly examine any known factors other than the alleged subsidized imports that were causing injury to the domestic industry.

8.3 In the light of our findings, it was not necessary for us to address, and we have exercised judicial economy in respect of, the European Communities' claims under Articles 15.1 and 15.4 of the *SCM Agreement* in respect of Economía's analysis of the volume of subsidized imports and the impact of these imports on prices in the domestic market for the like product and on the domestic industry.

8.4 Under Article 3.8 of the *DSU*, in cases where there is 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 that Mexico has acted inconsistently with certain provisions of the *SCM Agreement*, it has nullified or impaired benefits accruing to the European Communities under that *Agreement*.

8.5 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.

8.6 The European Communities has requested that we accompany our recommendation in this case with a suggestion, pursuant to the second sentence of Article 19.1 of the *DSU*, that a complete repeal would be the most appropriate means of bringing the measures into conformity with Mexico's WTO obligations. We decline to make a suggestion as to how Mexico should bring its measures into conformity with its obligations.

8.7 Pursuant to Article 19.1 of the *DSU*, having found that Mexico has acted inconsistently with provisions of the *SCM Agreement* as set out above, we recommend that Mexico bring its measures into conformity with that *Agreement*.
