

X. Findings and Conclusions

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

- (a) regarding the European Communities' claims concerning the continued application of the 18 anti-dumping duties at issue:
- (i) reverses the Panel's finding that the European Communities failed to comply with Article 6.2 of the DSU, and finds, instead, that the panel request identifies the specific measures at issue;
 - (ii) declines to make additional findings concerning whether the Panel acted inconsistently with Articles 7.1, 7.2, 11, and 12.7 of the DSU;
 - (iii) concludes that the continued application of the anti-dumping duties in each of the 18 cases was identified in the request for consultations;
 - (iv) finds that the continued use of the zeroing methodology in successive proceedings in which duties resulting from the 18 anti-dumping duty orders are maintained, constitute measures that can be challenged in WTO dispute settlement;
 - (v) regarding *Ball Bearings and Parts Thereof from Italy (Case II)*, *Ball Bearings and Parts Thereof from Germany (Case III)*, *Ball Bearings and Parts Thereof from France (Case IV)*, and *Stainless Steel Sheet and Strip in Coils from Germany (Case VI)*:
 - finds that the Panel's factual findings sufficiently establish the continued use of the zeroing methodology in successive proceedings whereby duties in these cases are maintained;
 - concludes that the application and continued application of anti-dumping duties is inconsistent with Articles 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 to the extent that the duties are maintained at a level calculated through the use of the zeroing methodology in periodic reviews;
 - concludes that the application and continued application of anti-dumping duties is inconsistent with Article 11.3 of the *Anti-Dumping Agreement* to the extent that reliance is placed upon a margin of dumping calculated through

- the use of the zeroing methodology in making sunset review determinations;
and
- declines to make additional findings under Articles 2.1, 2.4, 2.4.2, and 11.1 of the *Anti-Dumping Agreement*, Article VI:1 of the GATT 1994, and Article XVI:4 of the *WTO Agreement* for purposes of resolving this dispute;
 - (vi) declines to complete the analysis in respect of the remaining 14 of the 18 anti-dumping cases at issue; and
- (b) regarding the European Communities' claims concerning four preliminary determinations:
- (i) reverses the Panel's finding that the European Communities' claims concerning the four preliminary determinations were outside the Panel's terms of reference; and
 - (ii) declines the European Communities' request for a finding that the four preliminary determinations are inconsistent with "the provisions of the GATT 1994 and the *Anti-Dumping Agreement* cited in the Panel proceedings";
- (c) upholds the Panel's finding that the 14 periodic and sunset reviews were within the Panel's terms of reference;
- (d) upholds the Panel's finding that the United States acted inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 by applying simple zeroing in the 29 periodic reviews, and accordingly declines to rule on the conditional appeals of the European Communities regarding the Panel's finding;
- (e) as regards the European Communities' claims concerning the seven periodic reviews:
- (i) finds that the Panel acted inconsistently with Article 11 of the DSU when it found that the European Communities had not shown that simple zeroing was used in the seven periodic reviews at issue and, consequently, reverses this finding of the Panel;
 - (ii) completes the analysis and finds that the European Communities has shown that simple zeroing was used, and that the United States acted inconsistently with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping*

Agreement by applying simple zeroing in the periodic reviews in *Steel Concrete Reinforcing Bars from Latvia* (Case I – No. 3); *Stainless Steel Bar from Germany* (Case IX – No. 33); *Stainless Steel Bar from Germany* (Case IX – No. 34); *Stainless Steel Bar from Italy* (Case XI – No. 39); and *Certain Pasta from Italy* (Case XIII – No. 43); and

- (iii) declines to complete the analysis in respect of the periodic reviews in *Stainless Steel Bar from France* (Case V – No. 20) and *Stainless Steel Bar from France* (Case V – No. 21);
- (f) dismisses the United States' claim that the Panel acted inconsistently with Article 11 of the DSU in finding that the United States acted inconsistently with Article 11.3 of the *Anti-Dumping Agreement* with regard to the eight sunset reviews and, consequently, upholds this finding of the Panel; and
- (g) rejects the European Communities' request for a suggestion under Article 19.1 of the DSU.

396. 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 GATT 1994 and the *Anti-Dumping Agreement*, into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 20th day of January 2009 by:

Yuejiao Zhang
Presiding Member

Luiz Olavo Baptista
Member

David Unterhalter
Member