fifth administrative review, not to revoke the *Shrimp* anti-dumping order with respect to Camimex. In light of these findings, and in the light of Viet Nam's argument that Article 11.2 operationalizes the general principle set forth under Article 11.1, we do not consider it necessary to make findings under Article 11.1 of the Anti-Dumping Agreement.

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

a. Viet Nam has failed to establish that the simple zeroing methodology as used by the USDOC in administrative reviews is a measure of general and prospective application which can be challenged "as such". Therefore, we find that Viet Nam has not established that the USDOC's simple zeroing methodology in administrative reviews is inconsistent "as such" with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994;

b. The United States acted inconsistently with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 as a result of the USDOC's application of the simple zeroing methodology to calculate the dumping margins of mandatory respondents in the fourth, fifth and sixth administrative reviews under the *Shrimp* anti-dumping order;

c. The practice or policy whereby, in NME proceedings, the USDOC presumes that all producers/exporters in the NME country belong to a single, NME-wide, entity and assigns a single rate to these producers/exporters, is "as such" inconsistent with the United States' obligations under Articles 6.10 and 9.2 of the Anti-Dumping Agreement;

d. The United States acted inconsistently with its obligations under Articles 6.10 and 9.2 of the Anti-Dumping Agreement as a result of the application by the USDOC, in the fourth, fifth and sixth administrative reviews under the *Shrimp* anti-dumping order, of a rebuttable presumption that all companies in Viet Nam belong to a single, Viet Nam-wide, entity and assignment of a single rate to that entity;

e. Viet Nam has failed to establish the existence of a measure with respect to the manner in which the USDOC determines the NME-wide entity rate, in particular concerning the use of facts available. Therefore, we find that Viet Nam has not established that the alleged measure is "as such" inconsistent with Articles 6.8 and 9.4, and Annex II of the Anti-Dumping Agreement;

f. The United States acted inconsistently with Article 9.4 of the Anti-Dumping Agreement as a result of the application to the Viet Nam-wide entity of a duty rate exceeding the ceiling applicable under that provision in the fourth, fifth and sixth administrative reviews under the *Shrimp* anti-dumping order;

g. Viet Nam has failed to establish that the rate applied to the Viet Nam-wide entity in the fourth, fifth and sixth administrative reviews is inconsistent with Article 6.8 and Annex II of the Anti-Dumping Agreement;

h. Viet Nam has failed to establish that Section 129(c)(1) precludes implementation, with respect to prior unliquidated entries, of DSB recommendations and rulings. Therefore, we find that Viet Nam has not established that Section 129(c)(1) is "as such" inconsistent with Articles 1, 9.2, 9.3, 11.1 and 18.1 of the Anti-Dumping Agreement;

i. The United States acted inconsistently with Article 11.3 of the Anti-Dumping Agreement as a result of the USDOC's reliance on WTO-inconsistent margins of dumping or rates in its likelihood-of-dumping determination in the first sunset review;

j. The United States acted inconsistently with Article 11.2 of the Anti-Dumping Agreement in the fourth and fifth administrative reviews as a result of its treatment of requests for revocation made by certain Vietnamese producers/exporters that were not being individually examined. We do not make any findings with respect to Viet Nam's corresponding claim under Article 11.1 of the Anti-Dumping Agreement;

k. The United States acted inconsistently with Article 11.2 of the Anti-Dumping Agreement as a result of the USDOC's reliance on WTO-inconsistent margins of dumping in its determination, in the fourth administrative review, not to revoke the *Shrimp* anti-dumping order with respect to Minh Phu, and with respect to its determination, in the fifth administrative review, not to revoke the *Shrimp* anti-dumping order with respect to Camimex. We do not make any findings with respect to Viet Nam's corresponding claim under Article 11.1 of the Anti-Dumping Agreement.

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. We conclude that, to the extent that the measures at issue are inconsistent with the GATT 1994 and the Anti-Dumping Agreement, they have nullified or impaired benefits accruing to Viet Nam under those Agreements.

8.3. Pursuant to Article 19.1 of the DSU, we recommend that the United States bring the relevant measures into conformity with its obligations under the GATT 1994 and the Anti-Dumping Agreement.

8.4. Viet Nam requests that we exercise the discretion granted to WTO dispute settlement panels under Article 19.1 of the DSU to suggest that the United States implement this recommendation by revoking the anti-dumping duty order in its totality, and with respect to Minh Phu and Camimex, the latter as a consequence of eventual findings concerning the USDOC's treatment of these Vietnamese producers/exporters' requests for revocation.[578]

8.5. Article 19.1 of the DSU provides as follows:

> 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)

8.6. Thus, while a panel must ("shall") recommend that a Member found to have acted inconsistently with a provision of a covered agreement bring the relevant measure into conformity, it has discretion to ("may") suggest ways in which the responding Member could implement that recommendation. Previous panels have emphasized that Article 21.3 of the DSU gives the authority to decide the means of implementation, in the first instance, to the Member found to be in violation.[579] Although we have found that certain of the measures challenged by Viet Nam are inconsistent with the GATT 1994 and the Anti-Dumping Agreement, and recommend that the United States bring the relevant measures into conformity with its obligations under these Agreements, we decline to exercise our discretion under the second sentence of Article 19.1 in the manner requested by Viet Nam.

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[578] See above, para. 3.2.
[579] E.g. Panel Reports, *EC – Fasteners (China)*, para. 8.8; and *US – Hot-Rolled Steel*, para. 8.11.