

The European Union further explains that the corrected response of the company must be read in conjunction with the list of exhibits collected during the verification.⁵⁷⁴

7.234. Indonesia does not dispute that this information was made available to the Indonesian producers under investigation by the EU authorities. However, Indonesia asserts that the European Union attempts to "piece together a WTO-consistent disclosure of the results of the verification visits from scattershot sources and references in the record of the investigation".⁵⁷⁵ We recall in this regard that Article 6.7 prescribes no particular format for the disclosure of the verification results. As stated by the panel in *Korea – Certain Paper*, Article 6.7 "requires that the verification results be disclosed to the ... [producers] without specifying the format in which such disclosure is to be made".⁵⁷⁶ The fact that the information provided by the authorities appears in separate documents does not matter as long as the information supplied allows interested parties to understand the results of the verification.

7.235. We agree with the European Union that the corrections made to original response and the lists of exhibits collected on-the-spot are "outcome[s]"⁵⁷⁷ of the verification visit. Taken together however, these documents do not comprise the full extent of the "results" of the on-the-spot investigation, as they fail to put the investigated producer (PT Musim Mas) – and this Panel – in a position to understand in respect of which part of the questionnaire response or other information supplied supporting evidence was requested, whether any further information was requested, whether the exporter made available the evidence and additional information requested, and whether the investigating authorities were or were not able to confirm the accuracy of the information supplied by the verified producers in, *inter alia* their questionnaire responses. By looking at the "List of electronic files" attached to the confidential company-specific disclosure one can understand that some of the original worksheets provided by PT Musim Mas were corrected during the verification visit.⁵⁷⁸ However, we are unable to relate the corrections made to any evidence that was verified or not verified by the EU authorities during on-the-spot verifications.⁵⁷⁹

7.236. We consider that the EU authorities did not make available or disclose the "results of any such investigations" to PT Musim Mas, as required by Article 6.7, because they failed to explain those parts of the questionnaire response or other information supplied for which supporting evidence was requested and they also failed to explain whether:

- a. any further information was requested;
- b. the producer made available the evidence and additional information requested;
- c. the investigating authorities were or were not able to confirm the accuracy of the information supplied by the verified company, *inter alia* in its questionnaire response.

8 CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, we conclude as follows:

- a. With respect to the European Union's request for a preliminary ruling:

⁵⁷⁴ European Union's response to Panel question No. 49, paras. 48 and 49.

⁵⁷⁵ Indonesia's comments on the European Union's response to Panel question No. 49, para. 6.14.

⁵⁷⁶ Panel Report, *Korea – Certain Paper*, para. 7.188.

⁵⁷⁷ European Union's response to Panel question No. 49, para. 43.

⁵⁷⁸ We understand that worksheets 2.2, 2.3, 2.4, 2.9, 2.12, and 2.13 were amended on the basis of "Exhibit 1", which is described in Exhibit EU-14 as "Corrections to Tables (hard copy + CD-ROM with 6 Excel files)". We also understand that "Exhibits 8, 17 and 21" collected during the on-the-spot verifications are the corrected versions of PT Musim Mas original response for worksheets 2.6, 2.4, and 2.2 respectively. (List of exhibits provided to PTMM at the conclusion of the verification visit, (Exhibit EU-14) (BCI)).

⁵⁷⁹ For example, worksheet 2.2 of Exhibit EU-12, which is the Cost of Production table for PT Musim Mas shows corrections made "from the combined exhibits 1 + 21": we cannot discern however if these corrections were made by the company itself, or if they result from the verification by EU authorities of the company's cost of production, or from the correction of mathematical errors made in the original submission. The same is true for other worksheets included in Exhibit EU-12. (Excel file "PTMM definitive disclosure.xls", (Exhibit EU-12) (BCI)).

- i. the European Union has not demonstrated sufficiently that the correspondence sent by the Permanent Mission of Indonesia to the WTO Secretariat on 11 July 2013 constituted a request to suspend the work of the Panel in the sense of DSU Article 12.12;
 - ii. the work of the Panel was not suspended; and
 - iii. the authority for the establishment of this Panel has not lapsed.
- b. With respect to Indonesia's claims under Articles 2.3 and 2.4 of the Anti-Dumping Agreement:
- i. Indonesia has not demonstrated that the EU authorities acted inconsistently with Article 2.4 by making an improper deduction for a factor that did not affect price comparability; and
 - ii. Indonesia has therefore not demonstrated that the EU authorities consequently acted inconsistently with Article 2.3.
- c. With respect to Indonesia's claims under Articles 3.1 and 3.5 of the Anti-Dumping Agreement:
- i. Indonesia has not demonstrated that the EU authorities acted inconsistently with Articles 3.1 and 3.5 in their analysis of the economic crisis factor; and
 - ii. Indonesia has not demonstrated that the EU authorities acted inconsistently with Articles 3.1 and 3.5 in respect of the alleged "access to raw materials and price fluctuations" factor.
- d. With respect to Indonesia's claim under Article 6.7 of the Anti-Dumping Agreement, the EU authorities failed to make available or disclose the "results of any such investigations" to PT Musim Mas, and therefore acted inconsistently with of Article 6.7 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 have been found to be inconsistent with the Anti-Dumping Agreement, they have nullified or impaired benefits accruing to Indonesia under that agreement.

8.3. Pursuant to Article 19.1 of the DSU, we recommend that the European Union bring its measures into conformity with its obligations under the Anti-Dumping Agreement.
