

7.9 Consequential claims

7.279. The European Union claims that the DIMD acted inconsistently with Articles 1 and 18.4 of the Anti-Dumping Agreement and Article VI of the GATT 1994, as a consequence of the alleged breaches of the Anti-Dumping Agreement.

7.280. We note that the European Union's claims under Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 are purely consequential, in the sense that they depend on the outcome of other claims brought by the European Union under other provisions of the Anti-Dumping Agreement. As a consequence of the inconsistencies we have found to exist with the Anti-Dumping Agreement, we find that the Russian Federation acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

7.281. With respect to the European Union's claim under Article 18.4 of the Anti-Dumping Agreement, we note that the European Union has not brought any claims concerning the conformity of any laws, regulations or administrative procedures with the provisions of the Anti-Dumping Agreement as they may apply to the Russian Federation. Accordingly, we find that the European Union has not established its consequential claim under Article 18.4 of the Anti-Dumping Agreement.

8 CONCLUSIONS AND RECOMMENDATION

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

- a. the DIMD acted inconsistently with Article 4.1 in its definition of "domestic industry";
- b. the DIMD acted inconsistently with Article 3.1 because it undertook its injury and causation analyses on the basis of information related to an improperly defined domestic industry;
- c. the European Union has failed to establish that the DIMD acted inconsistently with Article 3.1 by purportedly using "non-equal and non-consecutive" periods in the examination of developments in injury indicators for the domestic industry. Having reached this conclusion, we also reject the European Union's consequential claims of inconsistency under Articles 3.2, 3.4, and 3.5;
- d. With respect to claims related to price suppression;
 - i. the DIMD acted inconsistently with Articles 3.1 and 3.2 by failing to taken into account the impact of the financial crisis in its price suppression analysis;
 - ii. the European Union has not established that the DIMD acted inconsistently with Articles 3.1 and 3.2 because the DIMD "mixed up" data expressed in USD and RUB without any explanation in its price suppression analysis;
 - iii. the European Union has not established that the DIMD's consideration of whether the subject imports have "explanatory force" for the occurrence of significant suppression of domestic prices was inconsistent with Articles 3.1 and 3.2;
 - iv. the European Union has not established that the DIMD did not demonstrate that the alleged price suppression was "to a significant degree" because the DIMD did not compare the estimated prices and the actual prices for the domestic like product.
- e. With respect to claims related to the state of the domestic industry,
 - i. the European Union has not established that the DIMD acted inconsistently with Articles 3.1 and 3.4 in its consideration of profit/profitability data in the Investigation Report;

- ii. the European Union has not established that the DIMD acted inconsistently with Articles 3.1 and 3.4 in its consideration of inventories data in the Investigation Report;
 - iii. the European Union has not established that the DIMD acted inconsistently with Articles 3.1 and 3.4 by failing to systematically compare data for 2011 with data for 2008 for all economic indicators in the present case;
 - iv. the European Union has not established that the DIMD failed to objectively examine the domestic industry's profit/profitability during the POI, the 1st half of 2011 and the full year of 2011;
 - v. the European Union has not established that the DIMD assumed that the exceptional positive developments in the domestic industry during 2009 could continue during 2010-2011 without more explanation, and "base[d] its conclusions on a comparison between these two time periods";
 - vi. the European Union has not established that the DIMD acted inconsistently with Articles 3.1 and 3.4 by failing to consider whether the market would accept further price increases;
 - vii. the European Union has not established that the DIMD acted inconsistently with Articles 3.1 and 3.4 by failing to specifically address the interested parties' argument on the comparison of the domestic industry's market share in 2010 and 2008;
 - viii. the European Union has not established that the DIMD acted inconsistently with Articles 3.1 and 3.4 in failing to evaluate the inventories of independent dealers and the reason for the increase in inventories;
 - ix. the DIMD acted inconsistently with Article 3.4 by failing to evaluate the magnitude of the margin of dumping;
 - x. the European Union has not established that the DIMD acted inconsistently with Articles 3.1 and 3.4 by failing to evaluate the domestic industry's return on investments, actual and potential effects on cash flow and the ability to raise capital or investments.
- f. With respect to claims related to causation and non-attribution,
- i. the DIMD acted inconsistently with Articles 3.1 and 3.5, insofar as it relied on its price suppression analysis in its causation determination;
 - ii. the European Union failed to establish that the DIMD's determination that the increased volume of dumped imports caused material injury to the domestic industry was inconsistent with Articles 3.1 and 3.5;
 - iii. the European Union failed to establish that the DIMD acted inconsistently with Articles 3.1 and 3.5 by failing to conduct a proper non-attribution analysis of the termination of the Fiat licence agreement;
 - iv. the European Union failed to establish that the DIMD acted inconsistently with Articles 3.1 and 3.5 in its non-attribution analysis of the competition from GAZ;
 - v. the European Union failed to establish that the DIMD acted inconsistently with Articles 3.1 and 3.5 by failing to consider the alleged financing difficulties as an "other factor" causing injury;
 - vi. the European Union failed to establish that the DIMD acted inconsistently with Articles 3.1 and 3.5 by failing to consider the alleged discontinuation of the government support programmes as an "other factor" causing injury;

- vii. the DIMD acted inconsistently with Articles 3.1 and 3.5 by failing to (a) examine, whether the alleged overly ambitious business plan of Sollers, in particular the level of capacity, was causing injury to the domestic industry at the same time as dumped imports, and if so, (b) separate and distinguish the injurious effects of that factor from the injurious effects of the dumped imports.
 - g. With respect to claims concerning confidential treatment,
 - i. the DIMD acted inconsistently with Article 6.5 by treating all information as set out in table 11 as confidential in the absence of any showing of good cause;
 - ii. the European Union failed to establish that the DIMD treated the Sollers letter of 25 December 2012 and the letter of the Association of Russian Automakers of 11 February 2013 as confidential.
 - h. With respect to claims concerning the disclosure of essential facts,
 - i. the European Union failed to establish that the DIMD acted inconsistently with Article 6.9 by not informing all interested parties of the information listed in items (a) to (c) of table 12;
 - ii. the DIMD acted inconsistently with Article 6.9 by failing to inform all interested parties of the information listed in items (d) to (o) of table 12.
- 8.2. We do not consider it necessary to address the European Union's claims under Article 6.5.1.
- 8.3. With respect to the European Union's consequential claims, we find that
- a. the Russian Federation acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994;
 - b. the European Union has not established its consequential claim under Article 18.4 of the Anti-Dumping Agreement.
- 8.4. 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 and the GATT 1994, they have nullified or impaired benefits accruing to the European Union under these agreements.
- 8.5. Pursuant to Article 19.1 of the DSU, we recommend that the Russian Federation bring its measures into conformity with its obligations under the Anti-Dumping Agreement and the GATT 1994.
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