

this regard to secure a positive resolution of this dispute. Thus, we exercise judicial economy with respect to Russia's claims under Articles 1 and 18.1 of the Anti-Dumping Agreement.

7.258. With respect to Russia's claims under Article VI of the GATT 1994, we note that Russia simply presented a claim under Article VI, without identifying either in its panel request or in its written submissions the specific paragraphs or the specific obligations under these paragraphs that it seeks to challenge.⁴⁶⁸ This was Russia's task, which it has failed to undertake.⁴⁶⁹ Therefore, we reject Russia's claim under Article VI of the GATT 1994.

7.259. Based on the foregoing, we exercise judicial economy on Russia's claims under Articles 1 and 18.1 of the Anti-Dumping Agreement, but reject its claim under Article VI of the GATT 1994.

8 FINDINGS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, with respect to Ukraine's request for a preliminary ruling on our terms of reference, we find that:

- a. ICIT's 2008 amended decision and the 2010 amendment are within our terms of reference;
- b. the claims identified in the following item numbers of Russia's panel request are within our terms of reference:
 - i. item number 1 of the panel request with respect to the claims under Articles 5.8, 11.1, 11.2, and 11.3 of the Anti-Dumping Agreement;
 - ii. item number 4 of the panel request with respect to claims under Article 6.8 and paragraphs 3, 5, and 6 of Annex II of the Anti-Dumping Agreement;
 - iii. item number 17 of the panel request with respect to claims under Articles 11.1, 11.2, and 11.3 of the Anti-Dumping Agreement insofar as they are based on the view that the Ukrainian authorities determined and relied on injury which was not established in accordance with Articles 3.1, 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement;
- c. the claims identified in item number 7 of Russia's panel request under Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement fall outside our terms of reference because they did not reasonably evolve from the legal basis set out in the consultation request, and thus we do not consider these claims; and
- d. Ukraine's request for a ruling that the alleged claims identified in item number 17 of the panel request under Articles 3.1 and 3.4 of the Anti-Dumping Agreement fall outside our terms of reference is moot.

8.2. For the reasons set forth in this Report, with respect to Russia's claims concerning the Ukrainian authorities' dumping and likelihood-of-dumping determinations in the underlying reviews, we find that:

- a. the Ukrainian authorities acted inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement in rejecting the reported gas cost of the investigated Russian producers without providing an adequate basis under the second condition of Article 2.2.1.1;

⁴⁶⁸ Russia's panel request, item number 19; first written submission, paras. 341, 344-346, and 347(13).

⁴⁶⁹ See, e.g. Panel Report, *US – OCTG (Korea)*, para. 7.337. The panel in *US – OCTG (Korea)* reached a similar conclusion with respect to a claim of consequential violation under Article VI. We note that some panels have made findings of consequential violations under Article VI without identifying the specific obligation under this provision which was violated. (See, e.g. Panel Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 7.336; and *Canada – Welded Pipe*, para. 7.223). However, we do not consider this approach is warranted in the present case.

- b. the Ukrainian authorities acted inconsistently with Article 2.2 of the Anti-Dumping Agreement in using a cost for gas that did not reflect the cost of the product under consideration "in the country of origin", i.e. Russia;
- c. the Ukrainian authorities acted inconsistently with Article 2.2.1 of the Anti-Dumping Agreement by relying on costs that were calculated inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement to make their determinations under Article 2.2.1;
- d. the Ukrainian authorities acted inconsistently with Articles 11.2 and 11.3 of the Anti-Dumping Agreement in relying on dumping margins calculated inconsistently with Articles 2.2, 2.2.1, and 2.2.1.1 of the Anti-Dumping Agreement to make their likelihood-of-dumping determinations;
- e. Russia has failed to establish that the Ukrainian authorities acted inconsistently with Article 2.1 of the Anti-Dumping Agreement in connection with the Ukrainian authorities' decision to not use the domestic sales price of the like product in Russia to calculate normal value of the investigated Russian producers;
- f. we do not need to address, and exercise judicial economy on, Russia's claim under Article 2.2 in connection with the Ukrainian authorities' rejection of the reported gas cost of the investigated Russian producers;
- g. we do not need to address, and exercise judicial economy on, Russia's claim under Article 2.2.1.1 of the Anti-Dumping Agreement in connection with the Ukrainian authorities' use of the export price of gas from Russia at the German border to calculate the cost of production of the investigated Russian producers;
- h. we do not need to address, and exercise judicial economy on, Russia's claim under Article 2.4 of the Anti-Dumping Agreement in connection with the Ukrainian authorities' alleged failure to make a fair comparison between the export price and the constructed normal value; and
- i. we do not need to address, and exercise judicial economy on, Russia's claim under Article 11.1 of the Anti-Dumping Agreement.

8.3. For the reasons set forth in this report, with respect to Russia's claims concerning the non-termination of the investigation against EuroChem, we find that:

- a. the Ukrainian authorities acted inconsistently with Article 5.8 of the Anti-Dumping Agreement by:
 - i. failing to exclude EuroChem from the scope of the original anti-dumping measures, specifically the 2008 amended decision;
 - ii. imposing a 0% anti-dumping duty on EuroChem through the 2010 amendment, instead of excluding it from the scope of the anti-dumping duty order;
 - iii. including EuroChem within the scope of the review determinations, and imposing anti-dumping duties on it through the 2014 extension decision;
- b. we do not need to address, and exercise judicial economy on, Russia's claims under Articles 11.1, 11.2, and 11.3 of the Anti-Dumping Agreement.

8.4. For the reasons set forth in this Report, we find that Russia has not established that the Ukrainian authorities acted inconsistently with Articles 11.1, 11.2, and 11.3 of the Anti-Dumping Agreement in connection with the Ukrainian authorities' alleged determination of and reliance on injury not established in accordance with Articles 3.1 and 3.4 of the Anti-Dumping Agreement in making their likelihood-of-injury determination.

8.5. For the reasons set forth in this Report, with respect to Russia's claims challenging the Ukrainian authorities' conduct in the underlying reviews, we find that:

- a. the Ukrainian authorities acted inconsistently with Article 6.9 of the Anti-Dumping Agreement in failing to disclose the essential facts underlying:
 - i. MEDT of Ukraine's price effects analysis, which formed part of the determinations on likelihood of injury;
 - ii. MEDT of Ukraine's dumping determinations;
- b. the Ukrainian authorities acted inconsistently with Article 6.9 of the Anti-Dumping Agreement in failing to give interested parties sufficient time to comment on MEDT of Ukraine's disclosure;
- c. Russia has failed to establish that the Ukrainian authorities acted inconsistently with Article 6.8, and paragraphs 3, 5, and 6 of Annex II of the Anti-Dumping Agreement in connection with alleged procedural violations by the Ukrainian authorities;
- d. Russia has failed to establish that the Ukrainian authorities acted inconsistently with Article 6.9 of the Anti-Dumping Agreement in connection with the disclosure of essential facts underlying its analysis of the economic state of the domestic industry, as part of the likelihood-of-injury determination;
- e. Russia has failed to establish that the Ukrainian authorities acted inconsistently with Article 6.2 of the Anti-Dumping Agreement in connection with the disclosure of essential facts underlying its analysis of the economic state of the domestic industry, as part of the likelihood-of-injury determination; and
- f. we do not need to address, and exercise judicial economy on, Russia's claims that the Ukrainian authorities acted inconsistently with Article 6.2 of the Anti-Dumping Agreement in failing to disclose the essential facts underlying:
 - i. MEDT of Ukraine's price effects analysis, which formed part of its determinations on likelihood of injury;
 - ii. MEDT of Ukraine's dumping determinations.

8.6. For the reasons set forth in this Report, with respect to the Russia's claims of consequential violations, we find that:

- a. Russia has failed to establish that the Ukrainian authorities acted inconsistently with Article VI of the GATT 1994 as a consequence of alleged violations under the Anti-Dumping Agreement; and
- b. we do not need to address, and exercise judicial economy on, Russia's claims under Articles 1 and 18.1 of the Anti-Dumping Agreement.

8.7. 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 certain provisions of the Anti-Dumping Agreement, they have nullified or impaired benefits accruing to Russia under this agreement.

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