

the 14 May submission, without requesting or obtaining that the interested party submitting the information show good cause.

7.695. Further, the Panel decided to reject Russia's claims #19 to #22 in their entirety.

## **8 CONCLUSIONS AND RECOMMENDATION**

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

- a. With respect to Russia's claims concerning the Cost Adjustment Methodology:
  - i. Russia has established the existence of the Cost Adjustment Methodology as a measure of general and prospective application attributable to the European Union.
  - ii. The Cost Adjustment Methodology is inconsistent with the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement, by providing for the rejection of the costs reflected in the records of the exporter or producer under investigation in a manner inconsistent with the second condition in the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement.
  - iii. Russia's claim that the Cost Adjustment Methodology is inconsistent with the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement because it uses costs other than "the costs associated with the production and sale of the product under consideration" lacks a valid basis in Article 2.2.1.1 of the Anti-Dumping Agreement. Therefore, we dismiss Russia's claim.
  - iv. The Cost Adjustment Methodology is inconsistent with Article 2.2 of the Anti-Dumping Agreement, by providing for the use of out-of-country input price information without establishing whether or explaining how such information is adequate to reflect or represent the costs of production in the country of origin.
- b. Regulations 2017/2321 and 2018/825 are not within our terms of reference.
- c. With respect to Russia's "as such" claim concerning the first subparagraph of Article 2(3) of the Basic AD Regulation, Russia has failed to demonstrate that this provision requires only "representative" prices be used in the construction of normal value of the like product. Accordingly, we do not consider it necessary to further examine additional aspects of Russia's "as such" claim in respect of the first subparagraph of Article 2(3) of the Basic AD Regulation.
- d. With respect to Russia's "as such" claims concerning the second subparagraph of Article 2(3) of the Basic AD Regulation, Russia has not discharged its burden of demonstrating that its legal rationale regarding the interpretation of Article 2.2 provides a valid basis for this claim. Accordingly, we dismiss Russia's claim that the second subparagraph of Article 2(3) of the Basic AD Regulation is inconsistent with Article 2.2 of the Anti-Dumping Agreement.
- e. With respect to Russia's "as such" claims concerning the second subparagraph of Article 2(5) of the Basic AD Regulation, Russia has failed to demonstrate its claims that the final part of the second subparagraph of Article 2(5) of the Basic AD Regulation is inconsistent with Article 2.2 and Article 2.2.1.1 of the Anti-Dumping Agreement.
- f. With respect to the anti-dumping measures on imports of certain welded tubes and pipes:
  - i. The European Commission acted inconsistently with the Article 2.2.1.1, by rejecting the costs reflected in the records of the Russian producer in a manner inconsistent with the second condition in the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement.
  - ii. The European Commission acted inconsistently with Article 2.2.1 of the Anti-Dumping Agreement because, in its ordinary-course-of-trade determination

under this provision, it relied on costs that were calculated inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement.

- iii. The European Commission acted inconsistently with Article 11.3 of the Anti-Dumping Agreement, by basing its conclusion that dumping was likely to recur on costs of production calculated inconsistently with Articles 2.2.1.1 and 2.2.1 of the Anti-Dumping Agreement.
- iv. We exercise judicial economy on Russia's claim that the European Commission acted inconsistently with Article 2.2.1.1 by using costs other than "the costs associated with the production and sale of the product under consideration".
- g. With respect to the anti-dumping measures on imports of AN from Russia and the underlying investigations and reviews:
  - i. Russia has failed to demonstrate that the Anti-dumping Agreement and the GATT 1994 apply to its claim against the alleged extension of the product scope of the measures to stabilized AN. Russia has also failed to demonstrate that the European Union impermissibly extended the product scope of the review to IGAN in the context of the third expiry review. As a consequence, Russia has not demonstrated that the European Union violated Articles 1, 2.1, 2.2, 2.4, 2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 9.1, 9.3, and 18.1 of the Anti-Dumping Agreement and Articles I:1, II:1 (a) and (b), VI:1, and VI:2 of the GATT 1994 (claim #1).
  - ii. The European Union acted inconsistently with Article 11.3 of the Anti-Dumping Agreement by failing to verify whether the constructed normal value included in the request was based on the cost of production in the country of origin, and, as a consequence, by failing to ensure that the review request was duly substantiated (claim #2).
  - iii. Russia has failed to demonstrate that the provisions of Article 3 of the Anti-Dumping Agreement applied to the expiry review at issue. Russia has also failed to demonstrate that the European Commission carried out undercutting calculations in a manner inconsistent with the provisions of Article 11.3 of the Anti-Dumping Agreement (claim #5).
  - iv. Russia has failed to demonstrate that the European Union violated Articles 4.1 and 11.3 of the Anti-Dumping Agreement by basing its likelihood of recurrence of injury determination (i) on data relating to a non-representative sample of the domestic industry; (ii) on the incomplete, non-representative and erroneous data provided by the sampled EU companies; and (iii) by failing to examine and explain the significantly divergent economic performance between the sampled and non-sampled EU domestic producers (claim #6).
  - v. Russia has failed to demonstrate that the European Union violated Article 11.3 by erroneously concluding that there were no indications that the non-injurious situation of the EU domestic industry would be sustainable (claim #7).
  - vi. Russia has failed to demonstrate that the European Commission's determination of likelihood of recurrence of injury was inconsistent with Article 11.3 of the Anti-Dumping Agreement because it was not based on positive evidence and on an objective examination of the level of production capacity available in Russia and of the capacity of absorption of Russian exports by third country markets (claim #8).
  - vii. Russia has failed to demonstrate that the provisions of Article 2 of the Anti-Dumping Agreement applied to the expiry review at issue. Russia has also failed to demonstrate that the European Union had breached Article 11.3 by failing to examine the impact of the alleged absence of dumping by the largest Russian exporters during the review investigation period and that the European Commission's determination of likelihood of recurrence of dumping was inconsistent with Article 6.10. Further, Russia's claim under Article 6.8 of the

Anti-Dumping Agreement is not sufficiently supported by the evidence on the record (claim #9).

- viii. Russia's claim #11 under Article 11.3 and Article VI of the GATT 1994 is consequential on a finding that the European Union's determination of a likelihood of recurrence of dumping violated Articles 2.1, 2.2, and 2.4. Since Russia has failed to demonstrate any inconsistency with these provisions, we reject Russia's claim #11 in its entirety.
- ix. Russia has failed to demonstrate that the European Union had violated Articles 11.3, 3.1, 11.1, 1 and 18.1 of the Anti-Dumping Agreement by conducting a single expiry review with regard to anti-dumping measures having different product scopes of application, combining within such review the likelihood of recurrence of injury and dumping determinations with regard to products subject to anti-dumping measures having different scopes of application and by extending the measures applicable to Kirovo based on the likelihood of injury and dumping determinations for the product other than that which formed the basis for the anti-dumping measures applied on products of this company. Russia's claims under Articles 1 and 18.1 of the Anti-Dumping Agreement are consequential to a finding of inconsistency with the provisions of Articles 3 and 11.3. Since Russia has failed to demonstrate any inconsistency with these provisions, we reject Russia's claim #3 insofar as it is based on these provisions. Further, we do not find it necessary to rule on Russia's claim under Article 11.1 (claim #3).
- x. Russia has failed to demonstrate that the European Union had violated Articles 11.3, and 4.1 of the Anti-Dumping Agreement by making a recurrence of injury determination based on erroneous and incomplete data provided by the domestic industry and by incorrectly defining the domestic industry (claim #4).
- xi. Claims #12 to #15 are consequential to a finding that various dumping determinations made prior to Russia's accession to the WTO were inconsistent with Article 2 of the Anti-Dumping Agreement. Russia has failed to demonstrate that these pre-WTO determinations could be challenged in these proceedings. Therefore, we reject Russia's claims #12 to #15 in their entirety.
- xii. The European Union, in the four instances raised by Russia, acted inconsistently with the obligation contained in Articles 6.1.2 and 11.4 of the Anti-Dumping Agreement to make the evidence available promptly. Since we have already found the European Union in breach of Article 6.1.2, we do not find it necessary to examine Russia's claim under Article 6.4 (claim #16).
- xiii. The European Union acted inconsistently with its obligation to make the full text of the expiry review request available to the interested parties upon initiation of the expiry review and therefore violated Articles 6.1.3 and 11.4 of the Anti-Dumping Agreement. Since we have already found the European Union in breach of Article 6.1.3, we do not find it necessary to examine Russia's claims under Articles 6.2 and 6.4 (claim #17).
- xiv. The European Union acted inconsistently with Articles 6.5 and 11.4 of the Anti-Dumping Agreement by granting confidential treatment to the identity of the author of the expert report in Annex I of the 14 May submission, without requesting or obtaining that the interested party submitting the information show good cause; in contrast, Russia has failed to demonstrate that the European Union acted inconsistently with Article 6.5 in relation to the submission dated 20 March 2014 (claim #18).
- xv. Russia has failed to demonstrate that the European Union violated Articles 6.5.1 and 11.4 of the Anti-Dumping Agreement by failing to require the domestic industry to furnish sufficiently detailed non-confidential summaries of the data submitted in confidence (claim #19).

- xvi. Russia has failed to demonstrate that the European Union violated Articles 6.8, 11.4 and Annex II of the Anti-Dumping Agreement when establishing the production capacity of Russian producers/exporters on the basis of actual production rather than on the basis of nameplate capacity (claim #20).
- xvii. Russia has failed to demonstrate that the European Union violated Articles 6.9 and 11.4 of the Anti-Dumping Agreement by failing to disclose the essential facts under consideration which formed the basis of its likelihood-of-injury determination (claim #21).
- xviii. Russia has failed to make a *prima facie* case that the public notice contained in Regulation 999/2014 was inconsistent with Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement because it did not provide in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authority and to explain the reasons which led to the acceptance or rejection of the arguments of the interested parties (claim #22).

8.2. 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.

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