

of the obligations in Article VI of GATT 1994 would be violated as a consequence of the alleged violations of specified provisions of the Anti-Dumping Agreement, the panel request is not in our view sufficient to present the problem clearly. The language used is not precise enough to define the basis for the Panel's terms of reference under Article 7.1 of the DSU, or to inform other WTO Members, including the respondent, of the nature of the dispute.

#### 7.12.2.2 Conclusion

7.549. For the reasons explained above, we conclude that Japan's consequential claim under Article 1 of the Anti-Dumping Agreement is within the Panel's terms of reference. In contrast, Japan's consequential claim under Article VI of GATT 1994 is not properly within the Panel's terms of reference, and we will neither consider it further nor resolve it.

#### 7.12.3 Evaluation by the Panel

7.550. Article 1 of the Anti-Dumping Agreement provides that:

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated[\*] and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

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[\*fn original]<sup>1</sup> The term "initiated" as used in this Agreement means the procedural action by which a Member formally commences an investigation as provided in Article 5.

7.551. We have already concluded that, with respect to the measure at issue, the Korean Investigating Authorities acted inconsistently with the following provisions of the Anti-Dumping Agreement: (a) Articles 3.1 and 3.5, as a result of flaws in their consideration of the effect of the dumped imports on prices in the domestic market in determining causation; (b) Article 6.5, having treated information provided by the applicants as confidential without good cause shown for such treatment; and (c) Article 6.5.1, with respect to the failure to require that submitting parties provide a sufficient non-confidential summary of information for which confidential treatment was sought.

7.552. Accordingly, we conclude that, in respect of the inconsistencies described above, the measure at issue was imposed pursuant to an investigation that was not conducted fully in accordance with the provisions of the Anti-Dumping Agreement. As noted above, the imposition of anti-dumping measures pursuant to investigations which have not been initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement necessarily results in a consequential violation of Article 1 of the Anti-Dumping Agreement.

#### 7.12.4 Conclusion

7.553. For the reasons explained above, we conclude that the Korean Investigating Authorities also acted inconsistently with Article 1 of the Anti-Dumping Agreement as a consequence of and to the extent of the inconsistencies we have already found with respect to the Anti-Dumping Agreement.

## 8 CONCLUSIONS AND RECOMMENDATION

### 8.1 Conclusions

8.1. Having considered Korea's request for a preliminary ruling and the responses thereto, as well as its invitation that the Panel consider *ex officio* whether others of Japan's claims are properly within its terms of reference, we find that, with respect to the following, Japan's panel request fails to provide a brief summary of the legal basis of the complaint which is sufficient to present the problem clearly. We therefore conclude that the following are *not* within the Panel's terms of reference and we neither consider nor resolve them in this report:

- a. Japan's claim under Articles 3.1 and 4.1 of the Anti-Dumping Agreement, concerning the definition of the domestic industry;
- b. Japan's claim under Articles 3.1 and 3.2 of the Anti-Dumping Agreement, concerning Korea's analysis of an increase in the volume of the dumped imports;
- c. Japan's claim under Articles 3.1 and 3.2 of the Anti-Dumping Agreement, concerning the consideration of the effect of the dumped imports on prices;
- d. Japan's claim under Articles 3.1 and 3.4 of the Anti-Dumping Agreement concerning the impact of the dumped import on the state of the domestic industry, with the exception of the allegations that the Korean Investigating Authorities failed to evaluate two of the specific factors listed in Article 3.4 (the ability to raise capital or investments, and the magnitude of the margin of dumping);
- e. Japan's claim under Articles 3.1 and 3.5 of the Anti-Dumping Agreement, concerning the alleged failure by the Korean Investigating Authorities to consider adequately all known factors other than the dumped imports that were injuring the domestic industry at the same time, with the exception of the allegations concerning whether the Korean Investigating Authorities considered certain known factors in isolation and dismissed them without an adequate examination;
- f. Japan's claim under Article 6.9 of the Anti-Dumping Agreement, concerning the alleged failure by the Korean Investigating Authorities to inform interested parties of essential facts which formed the basis for the decision to impose definitive anti-dumping measures;
- g. Japan's claims under Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement, concerning the alleged failure by the Korean Investigating Authorities to give proper public notice of their final determination; and
- h. Japan's consequential claim under Article VI of the GATT 1994.

8.2. We find that, with respect to the following, Japan's panel request does provide a brief summary of the legal basis of the complaint which is sufficient to present the problem clearly. We therefore conclude that the following *are properly within* the Panel's terms of reference:

- a. Japan's claim under Articles 3.1 and 3.4 of the Anti-Dumping Agreement concerning the alleged failure of the Korean Investigating Authorities to evaluate two of the specific factors listed in Article 3.4, i.e. the ability to raise capital or investments, and the magnitude of the margin of dumping;
- b. Japan's claim under Articles 3.1 and 3.5 of the Anti-Dumping Agreement that Korea's demonstration of causation lacks a foundation in its analyses of volume of dumped imports, effects of imports on prices, and the impact of those imports on the domestic industry, irrespectively and independently of whether Korea's analyses are found to be inconsistent with Articles 3.1, 3.2, and 3.4 of the Anti-Dumping Agreement;
- c. Japan's claim under Articles 3.1 and 3.5 of the Anti-Dumping Agreement, concerning the alleged failure by the Korean Investigating Authorities to demonstrate any causal relationship between the dumped imports and the injury to the domestic industry;
- d. Japan's claim under Articles 3.1 and 3.5 of the Anti-Dumping Agreement concerning the alleged failure of the Korean Investigating Authorities to examine certain known factors adequately and their examination of those factors in isolation;
- e. Japan's claims under Articles 6.5 and 6.5.1 of the Anti-Dumping Agreement, concerning the treatment of confidential information and the provision of non-confidential summaries of information for which confidential treatment was sought by the applicants; and
- f. Japan's consequential claim under Article 1 of the Anti-Dumping Agreement.

8.3. With respect to those of Japan's claims that are within our terms of reference as set forth in paragraph 8.2 above, we conclude that Japan has *not* demonstrated that the Korean Investigating Authorities acted inconsistently with:

- a. Articles 3.1 and 3.4 of the Anti-Dumping Agreement with respect to their evaluation of the investment and funding ability of the domestic industry and of the magnitude of the margin of dumping;
- b. Articles 3.1 and 3.5 of the Anti-Dumping Agreement with respect to their conclusion that the dumped imports, through the effects of dumping, were causing injury to the domestic industry; and
- c. Articles 3.1 and 3.5 of the Anti-Dumping Agreement with respect to their examination of known factors other than the dumped imports that were injuring the domestic industry at the same time.

8.4. With respect to those of Japan's claims that are within our terms of reference as set forth in paragraph 8.2 above, we further conclude that Japan *has demonstrated* that the Korean Investigating Authorities acted inconsistently with:

- a. Articles 3.1 and 3.5 of the Anti-Dumping Agreement in their causation analysis as a result of flaws in their analysis of the effect of the dumped imports on prices in the domestic market;
- b. Article 6.5 of the Anti-Dumping Agreement with respect to their treatment of information provided by the applicants as confidential without requiring that good cause be shown; and
- c. Article 6.5.1 of the Anti-Dumping Agreement with respect to their failure to require that the submitting parties provide a sufficient non-confidential summary of the information for which confidential treatment was sought.
- d. As a consequence of and to the extent of the inconsistencies described above, Korea's anti-dumping measures on imports of pneumatic valves from Japan are also inconsistent with Article 1 of the Anti-Dumping Agreement.

8.5. Pursuant to Article 3.8 of the DSU, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, to the extent Korea has acted inconsistently with certain provisions of the Anti-Dumping Agreement, we conclude that Korea has nullified or impaired benefits accruing to Japan under that Agreement.

## 8.2 Recommendation

8.6. Pursuant to Article 19.1 of the DSU, having found that Korea acted inconsistently with certain provisions of the Anti-Dumping Agreement, we recommend that Korea bring its measures into conformity with its obligations under that Agreement.

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