

manufacture hot-rolled steel, would affect the projected cost of production of hot-rolled steel, and therefore the projections of the hot-rolled industry's performance. Such an authority would consider that because the domestic industry's actual performance was compared against those projections of the domestic industry's performance to analyse injury to the industry, an inaccurately projected price of slab could affect the overall injury analysis. In the case at hand, the MDCCE dismissed the significance of the inaccuracy in the projected price of slab on the basis that Maghreb Steel quickly stopped purchasing slab. We consider that the MDCCE's explanation was not reasoned and adequate. As Turkey asserts⁴⁴³, Maghreb Steel's electric works were implemented in 2012, which even assuming that the works were implemented in January 2012, was 19 months after the company began producing hot-rolled steel. We recall that the entire 19-month period fell within the injury period.⁴⁴⁴ We agree with Turkey that in those 19 months, the inaccuracy in the projected price of slab was likely to have had an impact on Maghreb Steel's performance. We therefore consider that the MDCCE did not act objectively in dismissing the significance of the inaccuracy in the projected price of slab, without investigating the actual impact of the inaccuracy on the hot-rolled steel industry's performance.

7.288. Based on the foregoing, we take the view that the inaccuracies in the Business Plan were of a nature that an unbiased and objective investigating authority would not have relied on them, without further analysis. The MDCCE dismissed the significance of the inaccuracies in the Business Plan, without further investigating the impact of those inaccuracies on Maghreb Steel's actual and projected performance levels, and did so based on explanations that were not reasoned and adequate. Therefore, the MDCCE improperly relied on the McLellan report (on which the Business Plan was based). As a result, we find that the MDCCE's overall injury analysis, which was based on that report, is inconsistent with Articles 3.1 and 3.4 of the Anti-Dumping Agreement.

7.7.3 Overall Conclusion

7.289. For the foregoing reasons, we conclude that:

- a. The MDCCE acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement in failing to evaluate 5 of the 15 injury factors listed in Article 3.4, in particular, return on investments, actual and potential negative effects on cash flow, growth, wages, and ability to raise capital or investments. The MDCCE did not act inconsistently with Articles 3.1 and 3.4 by failing to evaluate factors affecting domestic prices.
- b. The MDCCE acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement in disregarding the captive market in its injury analysis.
- c. The MDCCE, in relying in its injury analysis on the McLellan report (on which the Business Plan was based) without properly investigating the significance of inaccuracies in that report, did not base its injury determination on an objective examination, and therefore acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement.

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set out in this Report, we conclude that the following claims of Turkey are outside our terms of reference:

- a. the claim under footnote 9 to Article 3 of the Anti-Dumping Agreement in respect of the MDCCE's finding of "establishment";
- b. the claims under Articles 6.5 and 6.5.1 of the Anti-Dumping Agreement in respect of the confidential treatment of the domestic industry's (Maghreb Steel) break-even threshold; and

⁴⁴³ Turkey's first written submission, para. 9.37.

⁴⁴⁴ See fn 347 above.

- c. the claim under Article 6.9 of the Anti-Dumping Agreement in respect of the alleged failure to inform all interested parties of the domestic industry's (Maghreb Steel) break-even threshold.

8.2. For the procedural reasons set out in this Report, we decline to rule on:

- a. the claim under Article VI:6(a) of the GATT 1994 in respect of the MDCCE's finding of "establishment"; and
- b. the claim under Article 6.9 of the Anti-Dumping Agreement in respect of any "essential facts" used by the MDCCE in cross-checking the facts available rate.

8.3. For the reasons set out in this Report, we conclude that Turkey has established that Morocco acted inconsistently with:

- a. Article 5.10 of the Anti-Dumping Agreement by failing to conclude the investigation within the 18-month maximum time limit set out in that provision;
- b. Article 6.8 of the Anti-Dumping Agreement by rejecting the reported information and establishing the margins of dumping for the two investigated Turkish producers on the basis of facts available;
- c. Article 6.9 of the Anti-Dumping Agreement by failing to inform all interested parties of: (i) any essential facts in respect of the additional, unidentified export sales that the MDCCE considered the producers to have failed to report; and (ii) the essential facts in respect of the data for the C&F prices and for the adjustments used in arriving at the producers' margins of dumping using facts available;
- d. Article 3.1 of the Anti-Dumping Agreement in determining that the domestic industry was "unestablished";
- e. Articles 3.1 and 3.4 of the Anti-Dumping Agreement by improperly conducting the injury analysis in the form of "material retardation of the establishment of the domestic industry"; and
- f. Articles 3.1 and 3.4 of the Anti-Dumping Agreement by: (i) failing to evaluate 5 of the 15 injury factors listed in Article 3.4; (ii) disregarding the captive market in the injury analysis; and (iii) relying in the injury analysis on the McLellan report without properly investigating the significance of inaccuracies in that report.

8.4. For the reasons set out in this Report, we conclude that Turkey has not established that Morocco acted inconsistently with:

- a. Article 6.9 of the Anti-Dumping Agreement by failing to inform all interested parties of the movement certificates and commercial invoices in respect of the [[***]] tonnes of allegedly unreported export sales in sufficient time for the two investigated Turkish producers to defend their interests; and
- b. Articles 3.1 and 3.4 of the Anti-Dumping Agreement by failing to evaluate "factors affecting domestic prices".

8.5. We do not consider it necessary to address Turkey's claims under paragraphs 1, 3, 5, 6, and 7 of Annex II of the Anti-Dumping Agreement.

8.6. Pursuant to 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 of benefits under that Agreement. Accordingly, to the extent the MDCCE has acted inconsistently with certain provisions of the Anti-Dumping Agreement, we conclude that Morocco has nullified or impaired benefits accruing to Turkey under this Agreement.

8.7. Pursuant to Article 19.1 of the DSU, we recommend that Morocco bring its measures into conformity with its obligations under the above-mentioned Agreement.

8.8. In light of the inconsistencies of the measures with the Anti-Dumping Agreement, including with Article 5.10, Turkey also requests the Panel to exercise its discretion under the second sentence of Article 19.1 of the DSU and to suggest that Morocco bring its measures into conformity with its WTO obligations by immediately revoking the anti-dumping measure at issue.⁴⁴⁵

8.9. We consider that Article 19.1 of the DSU allows, but does not require, us to suggest ways in which the Member concerned could implement the Panel's recommendations.⁴⁴⁶ Further, implementation of DSB recommendations and rulings is left, in the first instance, to the discretion of the implementing Member.⁴⁴⁷ We therefore deny Turkey's request.

⁴⁴⁵ Turkey's first written submission, paras. 5.20 and 11.4.

⁴⁴⁶ Panel Report, *US – Stainless Steel (Korea)*, para. 7.9.

⁴⁴⁷ Panel Reports, *US – Shrimp II (Viet Nam)*, para. 8.6; *EC – Fasteners (China)*, para. 8.8; *US – Hot-Rolled Steel*, para. 8.11.