

and Other Companies (Belgium)); and (b) final *negative* margins of dumping (Ecofrost (Belgium) and Farm Frites (the Netherlands)).

7.308. In light of this finding, we are not called upon to make further findings with respect to the other grounds presented by the European Union in support of its claims challenging MINCIT's analysis of the "price effects" under Articles 3.2 and 3.1; the impact on domestic industry under Articles 3.4 and 3.1; and the causal link under Articles 3.5 and 3.1.

8 CONCLUSIONS AND RECOMMENDATION

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

- a. with respect to the European Union's claims concerning MINCIT's decision to initiate the underlying investigation:
 - i. the European Union has not established that Colombia acted inconsistently with Article 5.3 of the Anti-Dumping Agreement because MINCIT failed to verify that there was "sufficient" evidence to initiate the investigation with respect to the full range of products covered by tariff subheading 2004.10.00.00;
 - ii. the European Union has not established that Colombia acted inconsistently with its obligations under Article 5.3 because MINCIT did not have "sufficient" evidence demonstrating that FEDEPAPA represented the domestic producers of the "like" product so as to justify initiating the underlying investigation;
 - iii. the European Union has established that Colombia acted inconsistently with Article 5.3 of the Anti-Dumping Agreement because, by failing to examine whether the use of third-country sales prices, instead of domestic sales prices, was "appropriate" in the specific facts and circumstances of the investigation at issue, MINCIT did not examine the "adequacy" of the evidence in the application to determine whether there is "sufficient" evidence to justify the initiation of the underlying investigation;
 - iv. the European Union has not established that Colombia acted inconsistently with its obligations under Article 5.3 because the evidence of injury examined and relied upon by MINCIT was insufficient to justify the initiation of the underlying investigation;
 - v. the European Union has not established that Colombia acted inconsistently with its obligations under Article 5.3 because the evidence of causal link examined and relied upon by MINCIT was insufficient to justify the initiation of the underlying investigation; and
 - vi. having found that Colombia acted inconsistently with its obligations under Article 5.3, the Panel does not consider it necessary to make additional findings concerning the European Union's claim under Article 5.8 of the Anti-Dumping Agreement in order to provide a positive resolution to the present dispute.
- b. With respect to the European Union's claims concerning the confidential treatment of certain information by MINCIT:
 - i. the European Union has established that Colombia acted inconsistently with its obligations under Article 6.5 of the Anti-Dumping Agreement with respect to the redacted information in section d(i) of FEDEPAPA's revised application because MINCIT granted confidential treatment to this information without a showing of "good cause" by the applicant. Given this finding of inconsistency, the Panel does not consider it necessary to make further findings on the European Union's claim under Article 6.5.1 concerning the information in section d(i) of the revised application in order to provide a positive resolution to the present dispute;

- ii. the European Union has not established that Colombia acted inconsistently with its obligations under Article 6.5 in respect of the information contained in annex 10 of the revised application because the European Union has not demonstrated: (a) that the applicant failed to show the necessary "good cause" for the confidential treatment requested; and (b) that MINCIT did not objectively assess the showing of "good cause" as the basis of granting confidential treatment; and
 - iii. the European Union has established that Colombia acted inconsistently with its obligations under Article 6.5.1 of the Anti-Dumping Agreement with respect to the information contained in annex 10 of FEDEPAPA's revised application because: MINCIT did not "require" the applicant to "furnish" non-confidential summaries of the confidential information contained in annex 10; and, to the extent that this information was not susceptible of summary, a statement of the reasons as to why summarization was not possible was not provided.
- c. With respect to the European Union's claims concerning the alleged use of "facts available" by MINCIT:
- i. the European Union has established that Colombia acted inconsistently with its obligations under Article 6.8 of the Anti-Dumping Agreement because MINCIT disregarded the export prices that the exporters had provided in their questionnaire responses and, instead, elected to use export prices extracted from the DIAN database to make its dumping determination; and
 - ii. having found that Colombia acted inconsistently with its obligations under Article 6.8, the Panel does not consider it necessary to make additional findings as to whether Colombia also acted inconsistently with its obligations under paragraphs 3 and 6 of Annex II and Article 2.1 in order to provide a positive resolution to the present dispute.
- d. With respect to the European Union's claims concerning MINCIT's assessment of the exporters' requests for adjustments:
- i. the European Union has established that Colombia acted inconsistently with its obligation to make a "fair comparison" under Article 2.4 of the Anti-Dumping Agreement because MINCIT denied the product mix-related adjustments requested by Agrarfrost, Aviko, and Mydibel;
 - ii. the European Union's claim under Article 2.4 of the Anti-Dumping Agreement concerning Mydibel's packaging cost-related adjustment request falls within the Panel's terms of reference;
 - iii. the European Union has established that Colombia acted inconsistently with its obligation to make a "fair comparison" under Article 2.4 of the Anti-Dumping Agreement because MINCIT denied Mydibel's packaging cost-related adjustment request;
 - iv. the European Union has established that Colombia acted inconsistently with its obligation to make a "fair comparison" under Article 2.4 of the Anti-Dumping Agreement because MINCIT denied Agrarfrost's oil cost-related adjustment request; and
 - v. having found that Colombia acted inconsistently with its obligation to make a "fair comparison" under Article 2.4, the Panel does not consider it necessary to make additional findings as to whether Colombia also acted inconsistently with its obligations under the last sentence of Article 2.4 in order to provide a positive resolution to the present dispute.

- e. With respect to the European Union's claims concerning MINCIT's injury and causation determinations:
- i. the European Union has established that Colombia acted inconsistently with its obligations under Articles 3.1, 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement because MINCIT included in its injury and causation determinations imports from the exporters that were determined to have: (a) final *de minimis* margins of dumping (Clarebout (Belgium), Agristo (Belgium), and Other Companies (Belgium)); and (b) final *negative* margins of dumping (Ecofrost (Belgium) and Farm Frites (the Netherlands)); and
 - ii. having found that Colombia acted inconsistently with its obligations under Articles 3.1, 3.2, 3.4, and 3.5, the Panel is not called upon to make further findings with respect to the other grounds presented by the European Union in support of its claims challenging MINCIT's analysis of the "price effects" under Articles 3.2 and 3.1; the impact on domestic industry under Articles 3.4 and 3.1; and the causal link under Articles 3.5 and 3.1.

8.2. Pursuant to Article 19.1 of the DSU, we recommend that Colombia bring its measures into conformity with its obligations under the GATT 1994 and the Anti-Dumping Agreement.
