

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

(a) Claims regarding USDOC's sunset review

8.1 With regard to claims regarding the alleged inconsistency of the US statute, 19 U.S.C. § 1675a(c)(1)), the Statement of Administrative Action (SAA) (pages 889-890) and the Sunset Policy Bulletin (SPB) (section II.A.3), with Article 11.3 of the AD Agreement, we conclude the SPB, in section II.A.3, establishes an irrebuttable presumption that termination of the anti-dumping duty would be likely to lead to continuation or recurrence of dumping, and therefore is, in this respect, inconsistent, as such, with the obligation set forth in Article 11.3 of the AD Agreement to determine likelihood of continuation or recurrence of dumping.

8.2 With regard to the determination of USDOC in the sunset review at issue in this dispute, we conclude that USDOC acted inconsistently with Article 11.3 of the AD Agreement in that its determination that dumping is likely to continue or recur is not supported by reasoned and adequate conclusions based on the facts before it.

8.3 We make no findings concerning Mexico's claims under Articles 2 and 6 of the AD Agreement in the context of the USDOC sunset review at issue in this dispute.

8.4 We conclude that claims regarding alleged inconsistency of USDOC "practice" in sunset reviews are not within the Panel's terms of reference.

(b) Claims regarding USITC's sunset review

8.5 We conclude that the standard applied by USITC in determining whether termination of the anti-dumping duty would be likely to lead to continuation or recurrence of injury, is not inconsistent with Article 11.3 of the AD Agreement as such, or as applied in the sunset review at issue in this dispute.

8.6 We conclude that the relevant provisions of US law, 19 U.S.C. §§ 1675a(a)(1) and (5) regarding the temporal aspect of USITC determinations of likelihood of continuation or recurrence of injury are not, as such, or as applied in the sunset review before us in this dispute, inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.7, 3.8, 11.1, and 11.3 of the AD Agreement.

8.7 We conclude that the USITC did not act inconsistently with Article 11.3 of the AD Agreement in making its determination of likelihood of continuation or recurrence of injury in the sunset review at issue in this dispute.

8.8 We conclude that the USITC's determination in the sunset review at issue in this dispute is not inconsistent with Articles 3.3 and 11.3 of the Agreement because it involved a cumulative analysis.

8.9 We make no findings regarding the remaining aspects of Mexico's claims under Articles 3.1, 3.2, 3.3, 3.4, 3.5, 3.7 and 3.8 of the AD Agreement.

(c) Claims regarding USDOC's fourth administrative review

8.10 We conclude that USDOC did not act inconsistently with Article 11.2 of the AD Agreement in determining not to revoke the anti-dumping duty in the fourth administrative review.

8.11 We further conclude that it is not necessary for us to address claims under Articles 11.2, 2.4, and 2.4.2 of the AD Agreement with respect to the calculation of dumping margins in the fourth administrative review.

8.12 We further conclude that USDOC did not act inconsistently with Article X:2 of the GATT 1994 in the conduct of the fourth administrative review in dispute before us.

(d) Other claims

8.13 We make no findings concerning alleged inconsistency with of Article X:3(a) of the GATT 1994 in the administration of US anti-dumping laws, regulations, decisions and rulings with respect to USDOC's conduct of sunset reviews of anti-dumping duty orders;

8.14 We make no findings concerning asserted subsidiary violations of the provisions of Article VI of the GATT 1994, Articles 1 and 18 of the AD Agreement, and Article XVI:4 of the WTO Agreement.

B. RECOMMENDATION AND REQUEST FOR SUGGESTION

8.15 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 of benefits under that agreement. Accordingly, we conclude that, to the extent the United States has acted inconsistently with the provisions of the AD Agreement, it has nullified or impaired benefits accruing to Mexico under that agreement. We therefore recommend that the Dispute Settlement Body request the United States to bring its measure into conformity with its obligations under the WTO Agreement.

8.16 Mexico requests that the Panel suggest that the United States implement its recommendation by immediately revoking the anti-dumping duty on OCTG imports from Mexico. The United States objects to this request.

8.17 We note that Article 19.1 of the *DSU* states that WTO panels may suggest ways the Member concerned could implement their recommendations:

Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement. In addition to its recommendations, the panel or Appellate Body **may** suggest ways in which the Member concerned could implement the recommendations. (footnotes omitted, emphasis added).

8.18 In the circumstances of the present proceedings, we see no particular reason to make such a suggestion and therefore decline Mexico's request.
