

VIII. CONCLUSIONS AND RECOMMENDATION

8.1 In light of our findings above, we conclude that:

- (a) The United States acted inconsistently with Article 2.4.2 of the *AD Agreement* when in the anti-dumping investigations listed in Exhibits EC-1 to EC-15 USDOC did not include in the numerator used to calculate weighted average dumping margins any amounts by which average export prices in individual averaging groups exceeded the average normal value for such groups.³⁸⁰
- (b) Sections 771(35)(A) and (B), 731 and 777(A)(d) of the Tariff Act are not as such inconsistent with Articles 2.4, 2.4.2, 5.8, 9.3, 1 and 18.4 of the *AD Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the WTO Agreement with respect to the use of a zeroing methodology in the calculation of margins of dumping in original investigations.³⁸¹
- (c) The United States' zeroing methodology, as it relates to original investigations, is a norm which, as such, is inconsistent with Article 2.42 of the *AD Agreement*.³⁸²
- (d) The United States did not act inconsistently with Article 2.4.2 of the *AD Agreement* when, in the administrative reviews listed in Exhibits EC-16 to EC-31, USDOC used a methodology that involved asymmetrical comparisons between export price and normal value and in which no account was taken of any amount by which export prices exceeded normal value.³⁸³
- (e) The United States did not act inconsistently with Article 2.4 of the *AD Agreement* when in the administrative reviews listed in Exhibits EC-16 to EC-31 USDOC calculated dumping margins by comparing average monthly normal value with prices of individual export transactions and did not include in the numerator of the dumping margins any amounts by which export prices of individual transactions exceeded the normal value.³⁸⁴
- (f) The United States did not act inconsistently with Articles 9.3, 11.1 and 11.2, 1 and 18.4 of the *AD Agreement*, Articles VI:1 and VI:2 of GATT 1994 and Article XVI:4 of the WTO Agreement in the administrative reviews listed in Exhibits EC-16 to EC-31.³⁸⁵
- (g) The Standard Zeroing Procedures used by the United States in administrative reviews or the United States practice or methodology of zeroing and Sections 771(35)(A) and (B), 731, 777A(d) and 751(a)(2)(i) and (ii) of the Tariff Act and Section 351.414(c)(2) of the USDOC Regulations are not as such inconsistent with Articles 2.4, 2.4.2, 9.3, 11.1 and 11.2, 1 and 18.4 of the *AD Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the WTO Agreement.³⁸⁶
- (h) The Standard Zeroing Procedures used or relied upon by the United States in new shipper reviews, changed circumstances reviews and sunset reviews and Sections

³⁸⁰ *Supra*, para. 7.32.

³⁸¹ *Supra*, para. 7.69.

³⁸² *Supra*, para. 7.106.

³⁸³ *Supra*, para. 7.223.

³⁸⁴ *Supra*, para. 7.284.

³⁸⁵ *Supra*, para. 7.288.

³⁸⁶ *Supra*, para. 7.291.

771(35)(A) and (B), 731, 777A(d) and 715(a)(2)(i) and (ii) of the Tariff Act and Section 351.414(c)(2) of the USDOC Regulations are not as such inconsistent with Articles 2.4, 2.4.2, 9.3, 9.5, 11.1, 11.2, 11.3, 1 and 18.4 of the *AD Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the WTO Agreement.³⁸⁷

8.2 We have also concluded that it is not necessary for us to make findings on the claim of the European Communities that the application of the model zeroing method in the investigations listed in Exhibits EC-1 to EC -15 was inconsistent with Articles 1, 2.4, 3.1, 3.2, 3.5, 5.8, 9.3 and 18.4 of the *AD Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the WTO Agreement³⁸⁸, and on the claim of the European Communities that the Standard Zeroing Procedures used by USDOC in original investigations are inconsistent as such with Articles 1, 2.4 3.1, 3.2, 3.5, 5.8, 9.3 and 18.4 of the *AD Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the WTO Agreement.³⁸⁹

8.3 Under 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, we conclude that to the extent the United States acted inconsistently with the provisions of the *AD Agreement*, it has nullified or impaired benefits accruing to the European Communities under the *AD Agreement*.

8.4 We therefore recommend that the Dispute Settlement Body request the United States to bring its measures into conformity with its obligations under the *AD Agreement*.

³⁸⁷ *Supra*, para. **Error! Reference source not found.**

³⁸⁸ *Supra*, paras. 7.33 and 7.34.

³⁸⁹ *Supra*, paras. 7.108 and 7.109.