necessary to refer to any of the information subject of the European Union's claim. Hence, we are not convinced that examining the European Union's claim on appeal will facilitate further the achievement of a satisfactory settlement of this dispute.

5.251. Furthermore, as mentioned in section 5.3 above, the anti-dumping measure at issue in this dispute expired on 12 November 2016.[417]

5.252. In light of the Panel's consideration of the appropriate extent of BCI protection based upon the parties' interim review comments, the company-specific nature of the information, as well as the expiry of the measure at issue, an examination of whether the Panel should have included the information in question in the circulated version of its Report is not necessary to secure a positive solution to this dispute. For these reasons, we find it unnecessary to rule on whether the Panel erroneously designated certain information as BCI and consequently erred by redacting that information from five paragraphs of the Panel Report.

6 FINDINGS AND CONCLUSIONS

6.1. For the reasons set out in this Report, the Appellate Body makes the following findings and conclusions.

Article 2.4 of the Anti-Dumping Agreement

6.2. The focus of Article 2.4 of the Anti-Dumping Agreement is not merely on a comparison between the normal value and the export price, but predominantly on the means to ensure the fairness of that comparison. To this end, investigating authorities are required to make due allowance for differences affecting price comparability. There are no differences affecting price comparability that are precluded, as such, from being the object of an allowance. Instead, the need to make due allowances must be assessed in light of the specific circumstances of each case. The Panel's articulation of the legal standard under Article 2.4 is consonant with our understanding of this provision. The existence of a close relationship between transacting companies would be pertinent to the extent that it affects the relevant transactions in such a way as to affect the comparability of the export price and the normal value. Thus, the Panel did not err in rejecting Indonesia's argument that the existence of what Indonesia denotes as a "single economic entity" is dispositive of whether a given mark-up qualifies as a difference which affects price comparability under Article 2.4.

a. Accordingly, we find that Indonesia has not demonstrated that the Panel erred in its interpretation of Article 2.4 of the Anti-Dumping Agreement.

6.3. With respect to Indonesia's claim that the Panel erred in its application of Article 2.4 to the facts of this case, we consider that the Panel's review of the EU authorities' evaluation was properly focused on whether that evaluation was consistent with Article 2.4 of the Anti-Dumping Agreement. The Panel did not err in finding that the EU authorities had a sufficient evidentiary basis for establishing that the mark-up paid by PT Musim Mas to ICOF-S in connection with export sales to the European Union was a difference affecting price comparability under Article 2.4. Moreover, contrary to Indonesia's argument, the Panel's reasoning does not imply that, when confronted with transactions between closely affiliated parties, investigating authorities may replace the expenses actually incurred with the expenses that would have been incurred had the producing entity obtained the service from an independent provider.

a. Accordingly, we find that Indonesia has not demonstrated that the Panel erred in its application of Article 2.4 of the Anti-Dumping Agreement to the facts of this case.

6.4. We also find that Indonesia has not demonstrated that the Panel acted inconsistently with Article 17.6(i) of the Anti-Dumping Agreement or Article 11 of the DSU in its analysis of Indonesia's claim under Article 2.4 of the Anti-Dumping Agreement.

[417] European Commission, Notice of the expiry of certain anti-dumping measures, *Official Journal of the European Union*, C Series, No. 418 (12 November 2016), p. 3.

a. Consequently, we uphold the Panel's finding, in paragraphs 7.160 and 8.1.b.i of the Panel Report, that Indonesia has not demonstrated that the EU authorities acted inconsistently with Article 2.4 of the Anti-Dumping Agreement by treating the mark-up paid by PT Musim Mas to ICOF-S as a difference affecting price comparability, and therefore making a downward adjustment to the export price.

Article 6.7 of the Anti-Dumping Agreement

6.5. On-the-spot investigations are one mechanism that investigating authorities may employ in satisfying their duty, under Article 6.6 of the Anti-Dumping Agreement, to ensure the accuracy of information supplied by interested parties. When such on-the-spot investigations are conducted, Article 6.7 requires that the firms subject to such visits be provided with the "results", or outcomes, of this verification process. The scope of on-the-spot investigations and the ensuing "results" to be communicated to the investigated firms vary from case to case, and are informed by the integral parts of the process of the on-the-spot investigations, which include the questions posed by the investigating authorities, the responses thereto, the scope of the advance notice, and the collection of any additional evidence during the on-the-spot investigations. In addition, the disclosure of the "results" of the on-the-spot investigations must enable the firms to which they are communicated to discern the information that the authorities considered to have been successfully verified, as well as the information that could not be verified, and to be informed of the results in sufficient detail and in a timely manner so as to be placed in a position to defend effectively their interests in the remaining stages of the anti-dumping investigation. We therefore find that the Panel did not err in its interpretation or application of Article 6.7 in determining the scope of the on-the-spot investigations and the ensuing "results" to be communicated to the investigated firms.

a. Consequently, we uphold the Panel's finding, in paragraphs 7.236 and 8.1.d of the Panel Report, that the EU authorities failed to make available or disclose the "results of any such investigations" to PT Musim Mas, and therefore acted inconsistently with Article 6.7 of the Anti-Dumping Agreement.

Article 3 of the DSU

6.6. We find that, in appealing the Panel Report notwithstanding the expiry of the measure at issue, Indonesia did not act inconsistently with Article 3 of the DSU. We therefore reject the European Union's requests to find it unnecessary to rule on the matter raised in Indonesia's appeal or to declare moot and of no legal effect all of the findings and conclusions made by the Panel.

Article 19 of the DSU

6.7. We have found that, as a general matter, it is within a panel's discretion to decide how to take into account subsequent modifications to, or the repeal of, the measure at issue. In the absence of any finding or acknowledgement by the Panel that the measure at issue is no longer in force, there was no basis for the Panel to have departed from the requirement in Article 19.1 of the DSU to make a recommendation after having found that measure to be inconsistent with the covered agreements.

a. Accordingly, we find that the Panel did not err or act inconsistently with Article 19.1 or Article 11 of the DSU in making a recommendation, at paragraph 8.3 of the Panel Report, with respect to the measure at issue.

Article 12.12 of the DSU

6.8. We have found that only a composed panel can take the decision to suspend panel proceedings. We therefore concluded that the first of the three findings made by the Panel was not pertinent to the question of whether the Panel's authority had lapsed.

a. Having so found, we declare moot and of no legal effect the Panel's finding, in paragraphs 7.29.a and 8.1.a.i of the Panel Report, that the European Union had not demonstrated that the correspondence sent by the Permanent Mission of Indonesia to

the WTO Secretariat on 11 July 2013 constituted a request to suspend the work of the Panel in the sense of Article 12.12 of the DSU.

6.9. We have also found that, in concluding that its work had not been suspended and that its authority had not lapsed, the Panel did not act inconsistently with Article 12.12 of the DSU. Moreover, we have found it unnecessary to address the European Union's claim that the Panel failed to undertake an objective assessment of the matter.

a. Consequently, we uphold the Panel's findings, in paragraphs 7.29.b and c, and 8.1.a.ii and iii of the Panel Report that the work of the Panel was not suspended and the authority for the establishment of the Panel did not lapse.

The Panel's treatment of certain information as BCI

6.10. We find it unnecessary to rule on whether the Panel erroneously designated certain information as BCI and consequently erred by redacting that information from five paragraphs of the Panel Report.

Recommendation

6.11. For the reasons set out in this Report, the Panel's recommendation at paragraph 8.3 of the Panel Report, that the European Union bring its measures into conformity with its obligations under the Anti-Dumping Agreement, stands.

Signed in the original in Geneva this 31st day of July 2017 by:

_____
Ricardo Ramírez-Hernández
Presiding Member

_____
Hyun Chong Kim
Member

_____
Hong Zhao
Member

_____