

negotiators conceived of the 'percentage limit' rule as applying even if ... imports, *including those with de minimis dumping margins*, have been assessed and found to cause injury within the meaning of Article VI."²⁴⁶ However, a review of the materials cited does not show that the relevance of *de minimis* margins vis-à-vis the injury determination was discussed by the negotiators.²⁴⁷ The reference to "imports, including those with *de minimis* dumping margins", which is not discernible from the materials, is dependent on Colombia's view that the term "dumped imports" includes *de minimis* margin imports.²⁴⁸ In sum, the supplementary means of interpretation relied on by Colombia do not lend credence to its interpretation of "dumped imports" as a "permissible" one.

4.5.3 Conclusion

4.101. Our analysis of the textual and contextual arguments advanced by Colombia indicates that its interpretation of the term "dumped imports" as including imports of exporters determined to have final *de minimis* dumping margins does not comport with a holistic reading of relevant provisions of the Anti-Dumping Agreement, and renders the requirement of "immediate termination" under Article 5.8 ineffective. Having tested Colombia's interpretation in light of Articles 31 and 32 of the Vienna Convention, we do not consider that a treaty interpreter, using the Vienna Convention method for treaty interpretation, could have reached Colombia's interpretation. This interpretation does not have the required degree of solidness or analytical support for it to be given deference as "permissible" within the bounds of the Vienna Convention method for treaty interpretation.

4.102. On the basis of the above, we uphold the Panel's finding, in paragraphs 7.303, 7.307, and 8.1.e.i of its Report, that the European Union had 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 final injury and causation determinations imports from the exporters that were determined to have final *de minimis* margins of dumping.

4.6 Award findings

4.103. In this Award, we have reached the following findings:

- a. we reverse the Panel's finding in paragraphs 7.75, 7.78, 7.79, and 8.1.a.iii of its Report, and find that relevant factual findings by the Panel demonstrate that MINCIT satisfied its duty under Articles 5.2(iii) and 5.3 of the Anti-Dumping Agreement, for the purpose of initiating an investigation, by examining the "appropriateness" of third-country sales prices consisting of export prices to the United Kingdom, including, in particular, their sufficiency vis-à-vis domestic sales prices; accordingly, we find that the European Union has not established that Colombia acted inconsistently with Article 5.3 of the Anti-Dumping Agreement;
- b. we uphold the Panel's finding, in paragraphs 7.126, 7.152.a, and 8.1.b.i of its Report, that the European Union had 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;
- c. we uphold the Panel's finding, in paragraphs 7.232, 7.233, 7.244, and 8.1.d.ii of its Report, that the European Union's claim under Article 2.4 of the Anti-Dumping Agreement concerning Mydibel's packaging cost-related adjustment request fell within the

²⁴⁶ Colombia's written submission, para. 7.60. (emphasis added)

²⁴⁷ See Colombia's written submission, para. 7.58. See also Japan's third party's written submission, para. 58 (noting that "the negotiators' comments cited by Colombia was made in a different context where the issue was whether anti-dumping duties should be imposed to imports with *de minimis* dumping margins, not in the context of whether imports with *de minimis* dumping margins should be included in the injury and causation analysis").

²⁴⁸ See Colombia's written submission, para. 7.60 (noting that "the negotiators conceived of the 'percentage limit' rule as applying even if the conditions of Article VI of the GATT 1947 were met"; that "[o]ne of these conditions ... is the determination of injury and causation"; and that "[i]n other words, the 'percentage limit' rule would apply even if, and therefore when, imports, including those with *de minimis* dumping margins, have been assessed and found to cause injury within the meaning of Article VI" (underlining original; emphasis added)).

Panel's terms of reference; we also decline Colombia's request to "declare moot and of no legal effect" the Panel's substantive findings under Article 2.4; and

- d. we uphold the Panel's finding, in paragraphs 7.303, 7.307, and 8.1.e.i of its Report, that the European Union had 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 final injury and causation determinations imports from the exporters that were determined to have final *de minimis* margins of dumping.

4.104. Paragraph 9 of the Agreed Procedures provides that the findings of the Panel that have not been appealed in this Arbitration shall be deemed to form an integral part of this Award together with our own findings, and that the Award shall include recommendations where applicable. Accordingly, we recommend that Colombia bring into conformity with the Anti-Dumping Agreement those measures found in this Award, and in the Panel Report as modified by this Award, to be inconsistent with that Agreement.

Alejandro JARA
Arbitrator

José Alfredo GRAÇA LIMA
Chairperson

Joost PAUWELYN
Arbitrator