

substantiate its submission by explaining how the European Commission failed to act consistently with Articles 3.1 and 3.4 by rejecting KLK's submission for the reasons that it did. In particular, Indonesia does not substantiate why the European Commission's overall analysis on injury was undermined by the views set by one of the producers in this letter.

7.277. For the foregoing reasons, we find that Indonesia has not established that the European Commission failed to give appropriate weight, in its overall assessment of the state of the domestic industry, to factors displaying a positive trend.

7.6 Indonesia's consequential claims under Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994

7.278. Indonesia contends that as a consequence of the substantive violations under the Anti-Dumping Agreement and the GATT 1994, the European Union acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.⁴⁰⁰

7.279. We note that Indonesia's claim under Article 1 of the Anti-Dumping Agreement is a purely consequential one. As a consequence of the substantive violations that we found above, we find that the European Commission also acted inconsistently with Article 1 of the Anti-Dumping Agreement.

7.280. With respect to Indonesia's consequential claim under Article VI of the GATT 1994, in presenting this consequential claim Indonesia does not identify the specific paragraphs of Article VI, or the specific obligations that it seeks to challenge. Like the panel in *US – OCTG (Korea)*, we do not consider that we can make findings under Article VI in general, or parse the complainant's claim to identify which obligations in Article VI are violated as a consequence of the substantive violations.⁴⁰¹ Therefore, we reject this consequential claim under Article VI. Nonetheless, we note that that we found, for the reasons set out above, a violation under Article VI:2 of the GATT 1994 because the anti-dumping duty imposed on Musim Mas was based on a margin of dumping calculated inconsistently with Article 2.4.1 of the Anti-Dumping Agreement.

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set out in this Report, we conclude that the European Union acted inconsistently with:

- a. Article 2.4.1 of the Anti-Dumping Agreement because of the European Commission's failure to use the rate of exchange on the date of sale as required by this Article⁴⁰²;
- b. Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 by imposing an anti-dumping duty exceeding the margin of dumping that should have been established under Article 2 due to the inconsistency with Article 2.4.1 of the Anti-Dumping Agreement as set out in paragraph 8.1(a) above⁴⁰³; and
- c. Article 1 of the Anti-Dumping Agreement as a consequence of these inconsistencies.⁴⁰⁴

8.2. For the reasons set out in this Report, we conclude that Indonesia has failed to establish that the European Union acted inconsistently with:

- a. Article 5.6 of the Anti-Dumping Agreement by continuing the anti-dumping investigation on imports of fatty acid despite the withdrawal of the written application⁴⁰⁵;

⁴⁰⁰ Indonesia's first written submission, paras. 310 and 370.

⁴⁰¹ Panel Report, *US – OCTG (Korea)*, para. 7.337. We are aware that some other panels have found consequential violations under Article VI as a whole, but do not consider such an approach to be warranted in this dispute. (See e.g. Panel Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 7.336; and *Canada – Welded Pipe*, para. 7.223)

⁴⁰² See para. 7.185 above.

⁴⁰³ See para. 7.192 above.

⁴⁰⁴ See para. 7.279 above.

⁴⁰⁵ See para. 7.24 above.

- b. Article X:3(a) of the GATT 1994 by reason of the European Commission's administration of Article 9(1) of the EU Basic Anti-Dumping Regulation and Article 14(1) of the EU Basic Anti-Subsidy Regulation by continuing the anti-dumping investigation while terminating the countervailing duty investigation despite the withdrawal of the written applications in both investigations⁴⁰⁶;
- c. Articles 2.2.2 and 2.2 of the Anti-Dumping Agreement and Article X:3(a) of the GATT 1994 "as such" by recourse to an alleged unwritten measure which Indonesia has failed to prove⁴⁰⁷;
- d. Articles 2.2.2 and 2.2 of the Anti-Dumping Agreement "as applied" by reason of the European Commission's construction of the normal value of two PCNs using SG&A costs and profits derived from the production and sales in the ordinary course of trade of those specific PCNs⁴⁰⁸;
- e. Articles 9.2 and 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 as a consequence of the alleged "as applied" violations under Articles 2.2.2 and 2.2 of the Anti-Dumping Agreement⁴⁰⁹;
- f. Article X:3(a) of the GATT 1994 "as applied" by reason of the European Commission's administration of Article 2(6) of the EU Basic Anti-Dumping Regulation in its application of two methodologies for constructing the normal value of PCNs sold in insufficient quantities on the domestic market⁴¹⁰;
- g. Articles 3.1 and 3.4 of the Anti-Dumping Agreement in connection with (i) the European Commission's examination of specific injury factors, and (ii) the European Commission's alleged failure to give appropriate weight to injury factors showing a positive trend in its overall injury analysis⁴¹¹; and
- h. Article VI of the GATT 1994 as a consequence of the inconsistencies with the Anti-Dumping Agreement and the GATT 1994.⁴¹²

8.3. 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. We conclude that, to the extent that the measures at issue are inconsistent with certain provisions of the Anti-Dumping Agreement and the GATT 1994, they have nullified or impaired benefits accruing to Indonesia under these agreements.

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

⁴⁰⁶ See paras. 7.59 and 7.63 above.

⁴⁰⁷ See para. 7.106 above.

⁴⁰⁸ See para. 7.129 above.

⁴⁰⁹ See para. 7.132 above.

⁴¹⁰ See para. 7.151 above.

⁴¹¹ See paras. 7.219, 7.229, 7.236, 7.249, 7.255, 7.262, 7.267, 7.269-7.270 and 7.277 above.

⁴¹² See para. 7.280 above.