6 FINDINGS AND CONCLUSIONS

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

6.1 Definition of domestic industry

6.2. Article 4.1 of the Anti-Dumping Agreement provides that the "domestic industry" is composed of domestic producers of the like product. If an investigating authority were permitted to leave out, from the definition of domestic industry, domestic producers of the like product that provided, in the authority's view, *allegedly* deficient information, a material risk of distortion would arise in the injury analysis. This is because the non-inclusion of those producers could make the definition of the domestic industry no longer representative of total domestic production. We do not consider that Article 3.1 of the Anti-Dumping Agreement allows investigating authorities to leave domestic producers of the like product out of the definition of domestic industry because of *alleged* deficiencies in the information submitted by those producers. The Anti-Dumping Agreement, in particular Article 6, sets out tools to address the inaccuracy and incompleteness of information. Thus, in our view, the Panel's interpretation of Article 4.1 does not create a conflict between the obligations in Article 3.1 and Article 4.1 of the Anti-Dumping Agreement. We also do not read the Panel's interpretation of Article 4.1 as having reduced the term "major proportion" to inutility. Moreover, we do not consider that Articles 3.1 and 4.1 prevent an investigating authority from initially examining the information submitted by domestic producers before defining the domestic industry to the extent that the information collected is pertinent to defining the domestic industry. We do not consider that the Panel reached its finding solely on the basis of the fact that the DIMD reviewed the information submitted by Sollers and GAZ before defining the domestic industry. In light of the specific circumstances of this case, we find no reversible error in the Panel's interpretation and application of Articles 4.1 and 3.1 of the Anti-Dumping Agreement.

a. We therefore find that the Panel did not err in its interpretation and application of Articles 3.1 and 4.1 of the Anti-Dumping Agreement in finding that the DIMD acted inconsistently with these provisions in its definition of "domestic industry".

b. Consequently, wC 0.347 0 ins83co 0.Dumpi ng

investigation record at the time the final determination to impose the anti-dumping measure was made. On appeal, the European Union faults the Panel for not having engaged with that same argument.

6.8. We recall that the confidential investigation report was submitted by Russia together with its first written submission to the Panel and that the European Union could not have been aware of the contents of the confidential investigation report before the receipt of Russia's first written submission. We note the difficulty the European Union had in the present case in obtaining and providing evidence to the Panel in support of its contention that the relevant parts of the confidential investigation report may not have formed part of the investigation record. In our view, when faced with a claim that a report, or parts of it, on the basis of which an anti-dumping measure was imposed did not form part of the investigation record, a panel has to take certain steps to assess objectively 0 ( )0.7 (a)25vss

meaning of Article 6.9 of the Anti-Dumping Agreement. Rather, only those methodologies the knowledge of which is necessary for the participants to understand the basis of the investigating authority's decision and to defend their interests may be essential facts under Article 6.9 of the Anti-Dumping Agreement. An assessment of whether a particular methodology constitutes an essential fact should therefore be made on a case

Signed in the original in Geneva this 26th day of January 2018 by:

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Hong Zhao
Presiding Member

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Shree Baboo Chekitan Servansing Ujal Singh Bhatia
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