

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 For the reasons set out above, the Panel concludes the following:

- (a) The Panel rejects the request of the Dominican Republic that it find that the impugned measures are not covered by Article XIX of the GATT 1994 or the Agreement on Safeguards and that, therefore, the dispute brought by the complainants, at least as far as these rules are concerned, is devoid of purpose and, on the contrary, concludes that the provisions of Article XIX of the GATT 1994 and the Agreement on Safeguards are applicable to the examination of the claims put forward in this dispute;
- (b) the Panel does not consider it necessary to rule on the request of the Dominican Republic that the Panel decline jurisdiction in the present dispute on the grounds that the complainants are contesting the Dominican Republic's application of a tariff higher than the preferential tariff provided for in regional free trade agreements, in view of the subsequent statements by the parties;
- (c) the Dominican Republic acted inconsistently with its obligations under Article XIX:1(a) of the GATT 1994 and Articles 3.1, last sentence, 4.2(c) and 11.1(a) of the Agreement on Safeguards with regard to the findings, in the preliminary and final determinations, on the unforeseen developments and the effect of the GATT obligations that were claimed to be the cause of the alleged increase in imports that caused serious injury;
- (d) the Dominican Republic acted inconsistently with its obligations under Articles 2.1 and 4.1(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 with regard to the findings, in the preliminary and final determinations, on the definition of the domestic industry;
- (e) the complainants have not made the case that the Dominican Republic acted inconsistently with its obligations under Articles 2.1, 3.1, last sentence, 4.2(a) and 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 with regard to the findings, in the preliminary and final determinations, on the increase in imports;
- (f) the Dominican Republic acted inconsistently with its obligations under Articles 2.1, 3.1, last sentence, 4.1(a), 4.2(a) and 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 with regard to the findings, in the preliminary and final determinations, on the existence of serious injury;
- (g) the complainants have not made the case that the Dominican Republic acted inconsistently with its obligations under Articles 2.1, 2.2, 3.1, 4.2, 6 and 9.1 of the Agreement on Safeguards by failing to conduct a new analysis in order to determine the increase in imports, injury and the causal link when excluding imports from Colombia, Indonesia, Mexico and Panama;
- (h) the Dominican Republic acted inconsistently with its obligations under Article 9.1 of the Agreement on Safeguards by failing to take all reasonable measures available to it

to exclude Thailand from the application of the provisional and definitive safeguards measures; and

- (i) the complainants have not made the case that the Dominican Republic acted inconsistently with its obligations under Articles XIX:2 of the GATT 1994 and 12.1(c) of the Agreement on Safeguards when notifying the definitive measure, or that the Dominican Republic failed to give them an opportunity for consultations in the terms provided in Articles XIX:2 of the GATT 1994 and 12.3 of the Agreement on Safeguards, or that the Dominican Republic failed to give them an opportunity to obtain an adequate means of trade compensation in the terms of Articles 8.1 of the Agreement on Safeguards and XIX:2 of the GATT 1994.

8.2 Pursuant to Article 3.8 of the DSU, in cases of failure to comply with obligations assumed under a covered agreement the measure is considered *prima facie* to constitute a case of nullification or impairment of the benefits accruing from that agreement. Consequently, we find that, to the extent that it acted inconsistently with certain provisions of the GATT 1994 and the Agreement on Safeguards, the Dominican Republic nullified or impaired benefits accruing to the complainants under those Agreements.

8.3 In accordance with Article 19.1 of the DSU and having found that the Dominican Republic acted inconsistently with certain provisions of the GATT 1994 and the Agreement on Safeguards, as described above, we recommend that the Dominican Republic bring its measures into conformity with its obligations under those Agreements.
