

IX. Findings and Conclusions

128. For the reasons set out in this Report, the Appellate Body:

- (a) *finds no error* in the Panel's interpretation and application of the term "necessary" in Article XX(d) of the GATT 1994; *finds it unnecessary* to complete the analysis of the Dominican Republic's defence under Article XX(d) of the GATT 1994; and, consequently, *upholds* the Panel's finding, in paragraphs 7.232, 7.233 and 8.1(e) of the Panel Report, that the tax stamp requirement is not justified under Article XX(d) of the GATT 1994;
- (b) *finds* that the Panel made an objective assessment of the facts of the case, as required by Article 11 of the DSU, in its examination of Exhibits DR-8 and DR-29;
- (c) *upholds* the Panel's finding, in paragraphs 7.311, 7.316, and 8.1(f) of the Panel Report, that Honduras failed to establish that the bond requirement accords less favourable treatment to imported cigarettes than that accorded to like domestic products, in a manner inconsistent with Article III:4 of the GATT 1994;
- (d) *finds* that the Panel made an objective assessment of the matter before it, as required by Article 11 of the DSU, in its consideration of Honduras' claim against the bond requirement "as such"; and,
- (e) *finds no error* in the Panel's treatment of Honduras' contentions regarding the timing of payment of the Selective Consumption Tax.

129. At the oral hearing, the participants agreed that the tax stamp regime as a whole had been altered by a new decree in October 2004.¹⁸⁰ Both participants nevertheless requested the Appellate Body to rule on the WTO-consistency of the original measure. In view of the above, the Appellate Body *recommends* that the Dispute Settlement Body request the Dominican Republic to bring the tax stamp requirement, found in this Report and in the Panel Report as modified by this Report to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement if, and to the extent that, the said modifications to the tax stamp regime have not already done so.

130. The Appellate Body also *recommends* that the Dispute Settlement Body request the Dominican Republic to bring its other measures, found in the Panel Report as modified by this Report, to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 7th day of April 2005 by:

Luiz Olavo Baptista
Presiding Member

John Lockhart
Member

Giorgio Sacerdoti
Member

¹⁸⁰ *Supra*, paras. 14 and 63 of this Report.