

### VIII. Findings and Conclusions

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

- (a) with respect to the Panel's terms of reference:
  - (i) reverses the Panel's finding, in paragraph 7.20 of the Panel Report, that the "measure at issue" for purposes of a claim under Article X:3(a) of the GATT 1994 must necessarily be "the manner of administration that is allegedly non-uniform, partial and/or unreasonable";
  - (ii) reverses the Panel's finding, in paragraphs 7.33 and 8.1(a)(i) of the Panel Report, that the specific measure at issue in this dispute is "the manner of administration ... of the Community Customs Code, the Implementing Regulation, the Common Customs Tariff, the TARIC and related measures in the areas of customs administration specifically identified in the United States' request for establishment of a panel"<sup>655</sup>; and finds, instead, that the specific measures at issue identified in the panel request are the Community Customs Code, the Implementing Regulation, the Common Customs Tariff, and the TARIC, as administered collectively;

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<sup>655</sup>Panel Report, para. 8.1(a)(i).

- (iii) reverses the Panel's finding, in paragraphs 7.50, 7.64, and 8.1(a)(iii) of the Panel Report, that, due to the wording and content of the panel request, the United States was precluded from challenging the European Communities' system of customs administration as a whole or overall; and reverses also the Panel's finding, in paragraphs 7.63, 7.64, and 8.1(a)(iii) of the Panel Report, that the Panel was precluded from considering the United States' argument that the "design and structure" of the European Communities' system of customs administration necessarily result in a violation of Article X:3(a) of the GATT 1994; and
  - (iv) upholds, albeit for different reasons, the Panel's interpretation, in paragraph 7.37 of the Panel Report, that "the steps and acts of administration that pre-date or post-date the establishment of a panel may be relevant to determining whether or not a violation of Article X:3(a) of the GATT 1994 exists at the time of [panel] establishment";
- (b) with respect to claims under Article X:3(a) of the GATT 1994:
  - (i) reverses the Panel's finding, in paragraph 7.119 of the Panel Report, that, without exception, Article X:3(a) of the GATT 1994 always relates to the application of laws and regulations, but not to laws and regulations as such; but upholds the Panel's conclusions, in paragraphs 7.434, 7.444, 8.1(d)(i), and 8.1(d)(ii) of the Panel Report, that substantive differences in penalty laws and audit procedures among the member States of the European Communities alone do not constitute a violation of Article X:3(a) of the GATT 1994;
  - (ii) concludes that the Panel did not find that Article X:3(a) of the GATT 1994 requires uniformity of "administrative processes"; upholds the Panel's finding, in paragraph 7.119 of the Panel Report, that the term "administer" in Article X:3(a) of the GATT 1994 may include administrative processes that put into effect the legal instruments of the kind described in Article X:1 of the GATT 1994; but reverses the Panel's finding, in paragraphs 7.276 and 8.1(b)(iv) of the Panel Report, that the administrative process leading to the tariff classification of blackout drapery lining amounts to non-uniform administration within the meaning of Article X:3(a) of the GATT 1994, and that the European Communities has violated Article X:3(a) of the GATT 1994 with respect to the tariff classification of blackout drapery lining;

- (iii) upholds the Panel's finding, in paragraphs 7.305 and 8.1(b)(v) of the Panel Report, that "[t]he tariff classification of liquid crystal display monitors with digital video interface amounts to non-uniform administration within the meaning of Article X:3(a) of the GATT 1994";
  - (iv) reverses the Panel's finding, in paragraphs 7.385 and 8.1(c)(ii) of the Panel Report, that "the European Communities does not administer its customs law concerning successive sales—in particular, Article 147(1) of the Implementing Regulation—in a uniform manner, in violation of Article X:3(a) of the GATT 1994"; and
  - (v) is unable to complete the analysis with respect to the United States' claim that the European Communities' system of customs administration as a whole or overall is not administered in a uniform manner, as required by Article X:3(a) of the GATT 1994;
- (c) with respect to Article X:3(b) of the GATT 1994:
- upholds the conclusion of the Panel, in paragraphs 7.539, 7.556, and 8.1(e) of the Panel Report, that "Article X:3(b) of the GATT 1994 does not necessarily mean that the decisions of the judicial, arbitral or administrative tribunals or procedures for the review and correction of administrative action relating to customs matters must govern the practice of *all* the agencies entrusted with administrative enforcement *throughout the territory* of a particular [WTO] Member"<sup>656</sup>; and
- (d) with respect to Article XXIV:12 of the GATT 1994:
- finds that the conditions on which the European Communities' appeal is predicated are not satisfied, and therefore does not consider it.

310. The Appellate Body recommends that the DSB request the European Communities to bring its measures, which have been 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.

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<sup>656</sup>(original emphasis)

Signed in the original in Geneva this 27th day of October 2006 by:

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A.V. Ganesan  
Presiding Member

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Merit E. Janow  
Member

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Yasuhei Taniguchi  
Member