

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 The Panel *concludes* that:

- (a) With respect to the Panel's terms of reference in the context of the United States' claim under Article X:3(a) of the GATT 1994:
 - (i) The Panel's terms of reference authorise the Panel to consider the manner of administration by the national customs authorities of the member States 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.
 - (ii) Article 221 of the Community Customs Code, including Article 221(3), is not covered by any of the areas of customs administration specifically identified in the United States' request for establishment of a panel. Therefore, Article 221(3) of the Community Customs Code is outside the Panel's terms of reference.
 - (iii) Under its terms of reference, the Panel is precluded from considering "as such" challenges of the design and structure of the EC system of customs administration as a whole and also the design and structure of the EC system in the areas of customs administration that have been specifically identified in the United States' request for establishment of a panel.
- (b) With respect to the United States' claim of non-uniform administration of the Common Customs Tariff in the area of tariff classification in violation of Article X:3(a) of the GATT 1994:
 - (i) The European Communities is not currently administering the Common Customs Tariff regarding the tariff classification of network cards for personal computers in a manner that is non-uniform in violation of Article X:3(a) of the GATT 1994. Therefore, the Panel finds no violation of Article X:3(a) of the GATT 1994 with respect to the tariff classification of network cards for personal computers.
 - (ii) The tariff classification of drip irrigation products does not amount to non-uniform administration within the meaning of Article X:3(a) of the GATT 1994. Therefore, the Panel finds no violation of Article X:3(a) of the GATT 1994 with respect to the tariff classification of drip irrigation products.
 - (iii) The United States has not proved that the tariff classification of unisex articles or shorts amounts to non-uniform administration within the meaning of Article X:3(a) of the GATT 1994.
 - (iv) 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. Therefore, the Panel finds a violation of Article X:3(a) of the GATT 1994 with respect to the tariff classification of blackout drapery lining.

- (v) The 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. Therefore, the Panel finds a violation of Article X:3(a) of the GATT 1994 with respect to the tariff classification of liquid crystal display monitors with digital video interface.
 - (vi) The United States has not proved that customs authorities in the member States have failed to treat as binding BTI issued by customs authorities in other member States and that such failure amounts to non-uniform administration within the meaning of Article X:3(a) of the GATT 1994.
 - (vii) The United States has not proved that the refusal to withdraw the revocation of BTI by the UK customs authorities with respect to the tariff classification of Sony PlayStation2 in the context of the *Sony PlayStation2* case amounts to non-uniform administration within the meaning of Article X:3(a) of the GATT 1994.
 - (viii) The United States has not proved that the interpretation and application of the amended explanatory notes to the Common Custom Tariff concerning camcorders in the context of the *Camcorders* case amounts to non-uniform administration in violation of Article X:3(a) of the GATT 1994.
- (c) With respect to the United States' allegations of non-uniform administration of the Community Customs Code and the Implementing Regulation in the area of customs valuation in violation of Article X:3(a) of the GATT 1994:
- (i) The United States has not proved that differences between member States regarding the manner in which royalties are apportioned to the customs value of identical goods imported by the same company exist that amount to non-uniform administration of Article 32(1)(c) of the Community Customs Code within the meaning of Article X:3(a) of the GATT 1994.
 - (ii) The imposition by customs authorities in some member States of a form of prior approval with respect to the successive sales provision, which is inconsistent with EC customs laws and which is not imposed by customs authorities in other member States means 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.
 - (iii) The European Communities is not currently administering Article 29(3)(a) of the Community Customs Code concerning vehicle repair costs covered under warranty in a manner that violates the uniformity obligation in Article X:3(a) of the GATT 1994. Therefore, the Panel finds no violation of Article X:3(a) of the GATT 1994 with respect to the administration of Article 29(3)(a) of the Community Customs Code concerning vehicle repair costs covered under warranty.
 - (iv) The United States has not proved that the manner of administration of Article 29 of the Community Customs Code and Article 143(1)(e) of the Implementing Regulation concerning the circumstances in which parties are to be treated as "related" for customs valuation purposes is non-uniform

among the member States within the meaning of Article X:3(a) of the GATT 1994.

- (d) With respect to the United States' allegations of non-uniform administration of the Community Customs Code and the Implementing Regulation in the area of customs procedures in violation of Article X:3(a) of the GATT 1994:
 - (i) The Panel finds no violation of Article X:3(a) of the GATT 1994 with respect to the manner of administration of Article 78(2) of the Community Customs Code regarding the requirements imposed for audit procedures following the release of products for free circulation in the European Communities.
 - (ii) The Panel finds no violation of Article X:3(a) of the GATT 1994 with respect to the substantive differences in penalty laws between member States.
 - (iii) The United States has not proved that the manner of administration of Article 133 of the Community Customs Code and Articles 502(3) and 552 of the Implementing Regulation regarding processing under customs control is non-uniform in violation of Article X:3(a) of the GATT 1994.
 - (iv) The United States has not proved that the administration of Articles 263 – 267 of the Implementing Regulation regarding local clearance procedures is non-uniform in violation of Article X:3(a) of the GATT 1994.
- (e) With respect to the United States' claim of violation of the obligation to provide prompt review and correction of administrative action relating to customs matter in Article X:3(b) of the GATT 1994, the Panel finds no violation.

8.2 Therefore, the Panel *concludes* that the European Communities has acted inconsistently with the requirements of Articles X:3(a) of the GATT 1994 and, thus, nullified or impaired benefits accruing to the United States. Accordingly, the Panel *recommends* that the Dispute Settlement Body request the European Communities to bring itself into conformity with respect to:

- (a) the administration of the Common Custom Tariff regarding the administrative process leading to the tariff classification of blackout drapery lining;
 - (b) the administration of the Common Customs Tariff regarding the tariff classification of liquid crystal display monitors with digital video interface;
 - (c) the administration of Article 147(1) of the Implementing Regulation regarding the imposition by customs authorities in some member States of a form of prior approval with respect to the successive sales provision in the context of customs valuation.
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