

XIII. Findings and Conclusions

320. In respect of the appeal of Panel Report, *US – Shrimp (Thailand)*, for the reasons set out in this Report, the Appellate Body:

- (a) upholds the Panel's finding, in paragraph 7.130 of the Panel Report, that the application of the EBR falls within the temporal scope of the *Ad Note*, in the sense that the *Ad Note* authorizes the imposition of security requirements during the period following the imposition of a United States anti-dumping duty order;
- (b) declares of no legal effect the interpretation developed by the Panel that the cash deposits required under United States law following the imposition of an anti-dumping duty order are not anti-dumping duties governed by Article 9 of the *Anti-Dumping Agreement*;
- (c) upholds the Panel's finding, in paragraph 7.150 of the Panel Report, that the additional security requirement resulting from the application of the EBR to subject shrimp is not "reasonable" within the meaning of the *Ad Note*;
- (d) reverses the legal interpretation made by the Panel, in footnote 184 to paragraph 7.142 of the Panel Report, that, in the context of the application of the EBR, there is no obligation under the *Ad Note* to assess the risk of default by individual importers; and
- (e) upholds the Panel's finding, in paragraph 7.192 of the Panel Report, that the EBR, as applied to subject shrimp, is not "necessary" within the meaning of Article XX(d) of the GATT 1994.

321. Consequently, the Appellate Body upholds the Panel's conclusion, in paragraph 8.1 of the Panel Report, that the application of the EBR to subject shrimp is inconsistent with Article 18.1 of the *Anti-Dumping Agreement* because it is inconsistent with the *Ad Note* to Article VI:2 and 3 of the GATT 1994.

322. The Appellate Body recommends that the DSB request the United States to bring its measure, found in this Report and in the Panel Report, *US – Shrimp (Thailand)*, as modified by this Report, to be inconsistent with the *Anti-Dumping Agreement* and the GATT 1994, into conformity with its obligations under those Agreements.

323. In respect of the appeal of Panel Report, *US – Customs Bond Directive*, for the reasons set out in this Report, the Appellate Body:

- (a) upholds the Panel's finding, in paragraph 7.107 of the Panel Report, that the application of the EBR falls within the temporal scope of the *Ad Note*, in the sense that the *Ad Note* authorizes the imposition of security requirements during the period following the imposition of a United States anti-dumping duty order;
- (b) declares of no legal effect the interpretation developed by the Panel that the cash deposits required under United States law following the imposition of an anti-dumping duty order are not anti-dumping duties governed by Article 9 of the *Anti-Dumping Agreement*;
- (c) upholds the Panel's finding, in paragraph 7.128 of the Panel Report, that the additional security requirement resulting from the application of the EBR to subject shrimp is not "reasonable" within the meaning of the *Ad Note*;
- (d) reverses the legal interpretation made by the Panel, in footnote 148 to paragraph 7.119 of the Panel Report, that, in the context of the application of the EBR, there is no obligation under the *Ad Note* to assess the risk of default by individual importers;
- (e) upholds the Panel's finding, in paragraphs 7.236-7.238 and 8.1 of the Panel Report, that the Amended CBD, by virtue of which the EBR is imposed, is not inconsistent "as such" with Articles 1 and 18.1 of the *Anti-Dumping Agreement* and Articles 10 and 32.1 of the *SCM Agreement*;
- (f) upholds the Panel's finding, in paragraphs 7.161, 7.263, 7.264, and 8.1 of the Panel Report, that the Amended CBD, by virtue of which the EBR is imposed, is not inconsistent "as such" and "as applied" with Articles 9.1, 9.2, 9.3, and 9.3.1 of the *Anti-Dumping Agreement* and that it is not inconsistent "as such" with Articles 19.2, 19.3, and 19.4 of the *SCM Agreement*;
- (g) finds it unnecessary, for purposes of resolving this dispute, to make an additional finding on India's claims that the Amended CBD is "as such" inconsistent with Article 18.4 of the *Anti-Dumping Agreement* and Article 32.5 of the *SCM Agreement*;

- (h) upholds the Panel's finding, in paragraph 7.196 of the Panel Report, that Section 1623 of the Tariff Act and Section 113.13 of the United States Regulations were not within its terms of reference;
- (i) finds that the Panel did not breach its obligation to make an objective assessment of the matter under Article 11 of the DSU, since it did not make a *prima facie* case for the United States when it included, in its analysis under Article XX(d) of the GATT 1994, certain laws and regulations other than those specifically cited by the United States for purposes of its defence under that provision; and
- (j) upholds the Panel's finding, in paragraph 7.313 of the Panel Report, that the EBR, as applied to subject shrimp, is not "necessary" within the meaning of Article XX(d) of the GATT 1994; and, therefore, does not express a view on the question of whether a defence under Article XX(d) of the GATT 1994 was available to the United States.

324. Consequently, the Appellate Body upholds the Panel's conclusion, in paragraph 8.2(i) of the Panel Report, that the application of the EBR to subject shrimp is inconsistent with Article 18.1 of the *Anti-Dumping Agreement* because it is inconsistent with the *Ad Note* to Article VI:2 and 3 of the GATT 1994.

325. The Appellate Body recommends that the DSB request the United States to bring its measure, found in this Report and in the Panel Report, *US – Customs Bond Directive*, as modified by this Report, to be inconsistent with the *Anti-Dumping Agreement* and the GATT 1994, into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 27th day of June 2008 by:

Giorgio Sacerdoti
Presiding Member

Luiz O. Baptista
Member

A.V. Ganesan
Member