

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 In light of the above findings, we *uphold* Thailand's claims that the application of the EBR to subject shrimp from Thailand is inconsistent with Article 18.1 of the *Anti-Dumping Agreement*, and the Ad Note. We *reject* the United States' argument that the application of the EBR is justified under Article XX(d) of the *GATT 1994*.

8.2 We further *uphold* Thailand's claim that the United States acted inconsistently with Article 2.4.2 of the *Anti-Dumping Agreement* by using zeroing to calculate margins of dumping in respect of the Anti-Dumping Measure.

8.3 In light of the above findings, we *decline to rule* separately on Thailand's claims that the application of the EBR to subject shrimp from Thailand is inconsistent with Articles I, II:1(a), the first and second sentences of Article II:1(b), X:3(a), and XI:1 of the *GATT 1994*.

8.4 Under Article 3.8 of the *DSU*, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, we conclude that to the extent the United States has acted inconsistently with the provisions of the *Anti-Dumping Agreement* and the *GATT 1994*, it has nullified or impaired benefits accruing to Thailand thereunder.

8.5 Article 19.1 of the *DSU* is explicit concerning the recommendation a panel is to make in the event it determines that a measure is inconsistent with a covered agreement:

"[i]t shall recommend that the Member concerned bring the measure into conformity with that agreement." (footnotes omitted)

8.6 We therefore recommend that the United States bring its measures into conformity with its obligations under the *Anti-Dumping Agreement* and the *GATT 1994*.
