

### VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 In light of the above findings, we *reject* India's claims that the laws, rules and regulations of the United States that authorize the imposition of the EBR and the instruments comprising the Amended CBD are inconsistent *as such* with the provisions of Articles 1, 7.1(iii), 7.2, 7.4, 9.1, 9.2, 9.3 (including 9.3.1), 18.1 and 18.4 of the *Anti-Dumping Agreement*; Articles 10, 17.1(c), 17.2, 17.4, 19.2, 19.3, 19.4 and 32.1 of the *SCM Agreement*; Articles VI:2 and VI:3 of the *GATT 1994*; and the Ad Note thereto.

8.2 In light of the above findings, we *uphold* India's claims that:

- (i) the application of the EBR to subject shrimp from India is inconsistent with Articles 1 and 18.1 of the *Anti-Dumping Agreement*, and the Ad Note; that
- (ii) the application of the EBR to subject shrimp from India prior to the imposition of the anti-dumping order is inconsistent with Article 7.2 of the *Anti-Dumping Agreement*; and that
- (iii) the United States violated Article 18.5 of the *Anti-Dumping Agreement* and Article 32.6 of the *SCM Agreement* because it failed to notify the Amended CBD to the Anti-Dumping and SCM Committees;

8.3 We *reject* the United States' argument that the application of the EBR is justified under Article XX(d) of the *GATT 1994*.

8.4 In light of the above findings, we *decline to rule* separately on India's claims that:

- (i) the application of the EBR to subject shrimp from India *prior* to the imposition of the anti-dumping order is inconsistent with Articles 7.1(iii), 7.4 and 7.5 of the *Anti-Dumping Agreement*; that
- (ii) the application of the EBR to subject shrimp from India is inconsistent with Articles I:1, Article II:1(a) and (b), X(3)(a), XI:1 and XIII of the *GATT 1994*; and that
- (iii) the laws, rules and regulations of the United States that authorize the imposition of the EBR and the instruments comprising the Amended CBD are inconsistent *as such* with Articles I:1, Article II:1(a) and (b), X(3)(a), XI:1 and XIII of the *GATT 1994*

8.5 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 India thereunder.

8.6 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*)

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

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