

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 We recall the complainants' request that the Panel issue its findings in the form of a single document containing two separate reports with common sections but separate conclusions and recommendations for each complaining party. In accordance with the requests by the complaining parties, we therefore provide two separate sets of conclusions and recommendations.

COMPLAINT BY THE EUROPEAN UNION (DS396): CONCLUSIONS OF THE PANEL

8.2 With respect to the claims advanced by the European Union, we find that, through its excise tax, the Philippines subjects imported distilled spirits made from raw materials other than those designated in its legislation to internal taxes in excess of those applied to like domestic spirits made from the designated raw materials, and is thus acting in a manner inconsistent with Article III:2, first sentence, of the GATT 1994.

8.3 We abstain from making findings with respect to the European Union's claim under the second sentence of Article III:2 of GATT 1994, because this claim was advanced as an alternative, only in the event that the Panel had not found that the measure at issue is inconsistent with the first sentence of the same provision.

8.4 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measure at issue is inconsistent with the GATT 1994, it has nullified or impaired benefits accruing to the European Union under that agreement.

8.5 Pursuant to Article 19.1 of the DSU, we recommend that the Dispute Settlement Body request the Philippines to bring its measure into conformity with its obligations under the GATT 1994.

COMPLAINT BY THE UNITED STATES (DS403): CONCLUSIONS OF THE PANEL

8.2 With respect to the claims advanced by the United States, we find that:

- (a) Through its excise tax, the Philippines subjects imported distilled spirits made from raw materials other than those designated in its legislation to internal taxes in excess of those applied to like domestic spirits made from the designated raw materials, and is thus acting in a manner inconsistent with Article III:2, first sentence, of the GATT 1994.
- (b) Through its excise tax, the Philippines applies dissimilar internal taxes on domestic distilled spirits made from designated raw materials and to directly competitive or substitutable imported distilled spirits made from other raw materials in a manner so as to afford protection to the Philippine domestic production of distilled spirits and is thus acting in a manner inconsistent with Article III:2, second sentence, of the GATT 1994.

8.3 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measure at issue is inconsistent with the GATT 1994, it has nullified or impaired benefits accruing to the United States under that agreement.

8.4 Pursuant to Article 19.1 of the DSU, we recommend that the Dispute Settlement Body request the Philippines to bring its measure into conformity with its obligations under the GATT 1994.
