

## 6 FINDINGS AND CONCLUSIONS IN THE APPELLATE BODY REPORT WT/DS400/AB/R

6.1. In the appeal of the Panel Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products* (WT/DS400/R) (Canada Panel Report), for the reasons set out in this Report, the Appellate Body:

- a. reverses the Panel's finding, in paragraphs 7.125 and 8.2(a) of the Canada Panel Report, that the EU Seal Regime constitutes a "technical regulation" within the meaning of Annex 1.1 to the TBT Agreement; and consequently, declares moot and of no legal effect the Panel's conclusions under:
  - i. Article 2.1 of the TBT Agreement, in paragraphs 7.319, 7.353, and 8.2(b) of the Canada Panel Report;
  - ii. Article 2.2 of the TBT Agreement, in paragraphs 7.505 and 8.2(c) of the Canada Panel Report;
  - iii. Article 5.1.2 of the TBT Agreement, in paragraphs 7.528, 7.547, and 8.2(d) of the Canada Panel Report; and
  - iv. Article 5.2.1 of the TBT Agreement, in paragraphs 7.580 and 8.2(e) of the Canada Panel Report;
- b. with respect to the Panel's analysis under Article I:1 and Article III:4 of the GATT 1994:
  - i. upholds the Panel's finding, in paragraphs 7.586 of the Canada Panel Report, that the legal standard of the non-discrimination obligations under Article 2.1 of the TBT Agreement does not apply equally to claims under Articles I:1 and III:4 of the GATT 1994; and
  - ii. upholds the Panel's finding, in paragraphs 7.600 and 8.3(a) of the Canada Panel Report, that the EU Seal Regime is inconsistent with Article I:1 of the GATT 1994 because it does not "immediately and unconditionally" extend the same advantage accorded to seal products of Greenlandic origin to like seal products of Canadian origin;
- c. with respect to the Panel's analysis under Article XX(a) of the GATT 1994:
  - i. finds that the Panel did not err in concluding, in paragraph 7.624 of the Canada Panel Report, that the analysis under Article XX(a) of the GATT 1994 should examine the prohibitive and permissive aspects of the EU Seal Regime;
  - ii. finds that the Panel did not err in concluding, in paragraph 7.631 of the Canada Panel Report, that the objective of the EU Seal Regime falls within the scope of Article XX(a) of the GATT 1994;
  - iii. upholds the Panel's finding, in paragraph 7.639 of the Canada Panel Report, that "the EU Seal Regime is provisionally deemed necessary within the meaning of Article XX(a) of the GATT 1994";
- d. with respect to the Panel's analysis under the chapeau of Article XX of the GATT 1994:
  - i. reverses the Panel's findings under the chapeau of Article XX of the GATT 1994, in paragraphs 7.649, 7.650, 7.651, and 8.3(d) of the Canada Panel Report, on the basis that the Panel applied an incorrect legal test;
  - ii. completes the analysis and finds that the European Union has not demonstrated that the EU Seal Regime, in particular with respect to the IC exception, is designed and applied in a manner that meets the requirements of the chapeau of Article XX of the GATT 1994; and, therefore,

iii. finds that the European Union has not justified the EU Seal Regime under Article XX(a) of the GATT 1994; and

e. with respect to the European Union's conditional other appeal under Article XX(b) of the GATT 1994, finds that the conditions upon which this appeal is premised are not met and, consequently, makes no finding with respect to the European Union's claim that the Panel erred in finding that the European Union failed to make a *prima facie* case for its claim under Article XX(b).

6.2. The Appellate Body recommends that the DSB request the European Union to bring its measure, found in this Report, and in the Canada Panel Report as modified by this Report, to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 29th day of April 2014 by:

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Thomas Graham  
Presiding Member

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Yuejiao Zhang  
Member

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Seung Wha Chang  
Member

## 6 FINDINGS AND CONCLUSIONS IN THE APPELLATE BODY REPORT WT/DS401/AB/R

6.1. In the appeal of the Panel Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products* (WT/DS401/R) (Norway Panel Report), for the reasons set out in this Report, the Appellate Body:

- a. reverses the Panel's finding, in paragraphs 7.125 and 8.2(a) of the Norway Panel Report, that the EU Seal Regime constitutes a "technical regulation" within the meaning of Annex 1.1 to the TBT Agreement; and consequently, declares moot and of no legal effect the Panel's conclusions under:
  - i. Article 2.2 of the TBT Agreement, in paragraphs 7.505 and 8.2(b) of the Norway Panel Report;
  - ii. Article 5.1.2 of the TBT Agreement, in paragraphs 7.528, 7.547, and 8.2(c) of the Norway Panel Report; and
  - iii. Article 5.2.1 of the TBT Agreement, in paragraphs 7.580 and 8.2(d) of the Norway Panel Report;
- b. with respect to the Panel's analysis under Article I:1 and Article III:4 of the GATT 1994:
  - i. upholds the Panel's finding, in paragraph 7.586 of the Norway Panel Report, that the legal standard of the non-discrimination obligations under Article 2.1 of the TBT Agreement does not apply equally to claims under Articles I:1 and III:4 of the GATT 1994; and
  - ii. upholds the Panel's finding, in paragraphs 7.600 and 8.3(a) of the Norway Panel Report, that the EU Seal Regime is inconsistent with Article I:1 of the GATT 1994 because it does not "immediately and unconditionally" extend the same advantage accorded to seal products of Greenlandic origin to like seal products of Norwegian origin;
- c. with respect to the Panel's analysis under Article XX(a) of the GATT 1994:
  - i. finds that the Panel did not err in concluding, in paragraph 7.624 of the Norway Panel Report, that the analysis under Article XX(a) of the GATT 1994 should examine the prohibitive and permissive aspects of the EU Seal Regime;
  - ii. finds that the Panel did not err in concluding, in paragraph 7.631 of the Norway Panel Report, that the objective of the EU Seal Regime falls within the scope of Article XX(a) of the GATT 1994;
  - iii. upholds the Panel's finding, in paragraph 7.639 of the Norway Panel Report, that "the EU Seal Regime is provisionally deemed necessary within the meaning of Article XX(a) of the GATT 1994";
- d. with respect to the Panel's analysis under the chapeau of Article XX of the GATT 1994:
  - i. reverses the Panel's findings under the chapeau of Article XX of the GATT 1994, in paragraphs 7.649, 7.650, 7.651, and 8.3(d) of the Norway Panel Report, on the basis that the Panel applied an incorrect legal test;
  - ii. completes the analysis and finds that the European Union has not demonstrated that the EU Seal Regime, in particular with respect to the IC exception, is designed and applied in a manner that meets the requirements of the chapeau of Article XX of the GATT 1994; and, therefore,
  - iii. finds that the European Union has not justified the EU Seal Regime under Article XX(a) of the GATT 1994; and

- e. with respect to the European Union's conditional other appeal under Article XX(b) of the GATT 1994, finds that the conditions upon which this appeal is premised are not met and, consequently, makes no finding with respect to the European Union's claim that the Panel erred in finding that the European Union failed to make a *prima facie* case for its claim under Article XX(b).

6.2. The Appellate Body recommends that the DSB request the European Union to bring its measure, found in this Report, and in the Norway Panel Report as modified by this Report, to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 29th day of April 2014 by:

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Thomas Graham  
Presiding Member

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Yuejiao Zhang  
Member

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Seung Wha Chang  
Member