

8 CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, we conclude that Ukraine acted inconsistently with:

- a. Article XIX:1(a) of the GATT 1994, by failing to make a proper determination regarding (i) the existence of unforeseen developments and (ii) the effect of GATT 1994 obligations;
- b. Article 2.1 of the Agreement on Safeguards, by failing to make a proper determination regarding increased imports;
- c. Article 4.2(a) of the Agreement on Safeguards, by failing to make a proper determination regarding threat of serious injury to the domestic industry;
- d. Article 4.2(b) of the Agreement on Safeguards, by failing to demonstrate the existence of a causal link and to conduct a proper non-attribution analysis;
- e. Article 4.2(c) of the Agreement on Safeguards, by failing to publish promptly its analysis of the case under investigation and its demonstration of the relevance of the factors examined;
- f. Article 8.1 of the Agreement on Safeguards, by failing to endeavour to maintain an adequate balance of concessions and other obligations.
- g. Article 12.1(a) of the Agreement on Safeguards, by failing to notify the WTO Committee on Safeguards immediately after initiating a safeguard investigation;
- h. Article 12.1(b) of the Agreement on Safeguards, by failing to notify the WTO Committee on Safeguards immediately after making a finding of serious injury or threat thereof caused by increased imports;
- i. Article 12.2 of the Agreement on Safeguards, by failing to provide, in its notification of 21 March 2013, "all pertinent information" as required by that provision; and
- j. Article 12.3 of the Agreement on Safeguards, by failing to provide Japan with adequate opportunity for prior consultations with a view to reviewing all pertinent information.

8.2. Further, and also for the reasons set forth in this Report, we conclude that Japan failed to establish that Ukraine acted inconsistently with:

- a. Article 3.1, second sentence, of the Agreement on Safeguards, by failing to provide reasonable public notice to all interested parties and public hearings or other appropriate means for interested parties to present evidence, views, and responses to presentations of other parties;
- b. Article 3.1, last sentence, of the Agreement on Safeguards, by failing to publish its report "promptly";
- c. Article 3.1, last sentence, or Article 4.2(c), of the Agreement on Safeguards, by failing to provide a timetable for progressive liberalization in its Notice of 14 March 2013;
- d. Articles 5.1 and 7.1 of the Agreement on Safeguards, by failing to apply the safeguard measure as necessary to facilitate adjustment;
- e. Article 7.4, first sentence, of the Agreement on Safeguards, by failing to progressively liberalize the safeguard measure at regular intervals; or
- f. Article 12.1(c) of the Agreement on Safeguards, by failing to notify the WTO Committee on Safeguards immediately after taking a decision to apply a safeguard measure.

8.3. In the light of the conditional nature of Japan's claim under Article 12.5 regarding notification of the results of consultations under Article 12.3 and our finding that the condition was not fulfilled, we reached no conclusion on this claim.

8.4. With respect to the remainder of Japan's claims under Articles 2.1⁶⁰¹; 3.1, first sentence⁶⁰²; 3.1, last sentence, and 4.2(c)⁶⁰³; 4.1(a) and 4.1(b)⁶⁰⁴; 4.2(a)⁶⁰⁵; 5.1⁶⁰⁶; and 11.1(a)⁶⁰⁷ of the Agreement on Safeguards and Articles II:1(b) and XIX:1(a)⁶⁰⁸ of the GATT 1994, we exercised judicial economy and reached no conclusions.

8.5. Pursuant to Article 3.8 of the DSU, in cases of failure to comply with obligations assumed under a covered agreement, the measure is considered *prima facie* to constitute a case of nullification or impairment of the benefits accruing from that agreement. Consequently, we find that, to the extent that it acted inconsistently with certain provisions of the Agreement on Safeguards and the GATT 1994, Ukraine nullified or impaired benefits accruing to Japan under those Agreements.

8.6. Having found that Ukraine acted inconsistently with certain provisions of the Agreement on Safeguards and the GATT 1994, as described above, in accordance with Article 19.1 of the DSU, we recommend that the DSB request Ukraine to bring its measures into conformity with its obligations under those Agreements.⁶⁰⁹

8.7. Japan requested the Panel to exercise its authority under the second sentence of Article 19.1 to suggest ways in which Ukraine could implement the recommendations of the Panel, and in particular, to suggest that Ukraine revoke its safeguard measures.⁶¹⁰

8.8. Article 19.1 of the DSU states that WTO panels may suggest ways in which the Member concerned could implement their recommendations. However, a panel is not required to make such a suggestion. In the light of the nature and number of inconsistencies with the Agreement on Safeguards and the GATT 1994 that we have found in this case, we suggest that Ukraine revoke its safeguard measure on passenger cars.

⁶⁰¹ Cited in support of claims concerning Ukraine's determinations of increased imports, serious injury or threat thereof, and the causal link.

⁶⁰² Cited in support of a claim concerning the conduct of the investigation.

⁶⁰³ Cited in support of claims concerning Ukraine's determinations of unforeseen developments, the effect of GATT 1994 obligations, increased imports, serious injury or threat thereof and the causal link, and a claim concerning the necessity of the measure to prevent serious injury.

⁶⁰⁴ Cited in support of claims concerning Ukraine's determinations of serious injury or threat thereof and the causal link.

⁶⁰⁵ Cited in support of claims concerning Ukraine's determinations of increased imports and the causal link.

⁶⁰⁶ Cited in support of a claim concerning the necessity of the measure to prevent serious injury.

⁶⁰⁷ Cited in support of claims concerning Ukraine's determinations of unforeseen developments, the effect of GATT 1994 obligations, increased imports, serious injury or threat thereof and the causal link, and a claim concerning the necessity of the measure to prevent serious injury.

⁶⁰⁸ Cited in support of the same claims as those identified in the previous footnote.

⁶⁰⁹ With regard to the conclusion contained in para. 8.1j above, we note that after the establishment of this Panel, Ukraine notified to the Committee on Safeguards a timetable for progressive liberalization of the safeguard measure at issue in this dispute.

⁶¹⁰ Japan's first written submission, paras. 374-376.