8 CONCLUSIONS AND RECOMMENDATION(S)

8.1. As described in greater detail above, the Panel *finds* that:

a. In respect of Indonesia's request for a preliminary ruling:

i. Nothing in the wording of Article 6.2 of the DSU precludes a complainant from setting out claims in the footnotes to its panel request. Footnotes form part of the text of a panel request and may be relevant to the presentation of the legal basis of the complaint. The fact that the co-complainants have set out claims pursuant to Article 3.2 of the Import Licensing Agreement and Article III:4 of the GATT 1994 within footnotes 5, 7, 8, 12 and 14 of their panel requests does not render these requests inconsistent with the requirements of Article 6.2 of the DSU;

ii. Indonesia has failed to demonstrate that the co-complainants have not sufficiently identified their claims pursuant to Article 3.2 of the Import Licensing Agreement and Article III:4 of the GATT 1994 because the language employed in footnotes 5, 7, 8, 12 and 14 of their panel requests is "conditional and ambiguous";

iii. Indonesia has failed to demonstrate that the co-complainants have not sufficiently identified their claims pursuant to Article 3.2 of the Import Licensing Agreement and Article III:4 of the GATT 1994, by referring to the wording of these provisions when formulating the relevant claims in footnotes 5, 7, 8, 12 and 14 of the panel requests and by not providing a proper or sufficient explanation of how the measures at issue are inconsistent with Article III:4 of the GATT 1994 or Article 3.2 of the Import Licensing Agreement;

iv. We therefore reject Indonesia's contention that the manner in which the co-complainants formulated their claims pursuant to Article 3.2 of the Import Licensing Agreement and Article III:4 of the GATT 1994 in their panel requests did not sufficiently identify their claims and thereby failed to comply with the requirements of Article 6.2 of the DSU;

v. We further find that the fact that a co-complainant, in this case the United States, has not argued a claim included in its panel request, in this case Article III:4 of the GATT 1994, within its first written submission is not relevant for the purpose of assessing whether such a claim has been adequately identified in a panel request pursuant to Article 6.2 of the DSU;

vi. In the light of our finding in paragraph 8.1.a.v above, we reject Indonesia's contention that it suffered prejudice as a result of the formulation of those claims. In our view, Indonesia would have been on notice that the co-complainants were pursuing claims under Article 3.2 of the Import Licensing Agreement and Article III:4 of the GATT 1994 and hence Indonesia's due process rights were not affected by virtue of the content of the panel requests; and

vii. Concerning Indonesia's request that we evaluate the consistency with Article 6.2 of the DSU of their first written submissions, the Panel declines to make such an evaluation because Article 6.2 regulates the requirements that panel requests must satisfy but does not speak to the requirements of first written submissions.

b. In respect of the co-complainants' claims under Article XI:1 of the GATT 1994:

i. Measures 1 through 7, 9 and 11 through 17 are inconsistent with Article XI:1 of the GATT 1994 because, by virtue of their design, architecture and revealing structure, they constitute a restriction having a limiting effect on importation;

ii. Measures 8 and 10 are inconsistent with Article XI:1 of the GATT 1994 because, by virtue of their design, architecture and revealing structure, they constitutes prohibition on importation; and

iii. Measure 18 is inconsistent *as such* with Article XI:1 of the GATT 1994 because, by virtue of its design, architecture and revealing structure, it constitutes a restriction

having a limiting effect on importation. Accordingly, the Panel declines to rule on whether Measure 18 is also inconsistent *as applied* with Article XI:1 of the GATT 1994.

c. In respect to Indonesia's defence under Article XX of the GATT 1994:

i. Indonesia has failed to demonstrate that Measures 1, 2 and 3 are justified under Article XX(d) of the GATT 1994;

ii. Indonesia has failed to demonstrate that Measure 4 is justified under Article XX(b) of the GATT 1994;

iii. Indonesia has failed to demonstrate that Measures 5 and 6 are justified under Articles XX(a), (b) and (d) of the GATT 1994;

iv. Indonesia has failed to demonstrate that Measure 7 is justified under Article XX(b) of the GATT 1994;

v. Indonesia has failed to demonstrate that Measure 8 is justified under Article XX(b) of the GATT 1994; and

vi. Indonesia has failed to demonstrate that Measures 9 through 18 are justified under Articles XX(a), (b) or (d) of the GATT 1994, where appropriate.

8.2. Concerning the co-complainants' claims under Article 4.2 of the Agreement on Agriculture, the Panel declines to rule because its findings pertaining to the inconsistency of Measures 1 through 18 with Article XI:1 of the GATT 1994 and the absence of justification under Articles XX(a), (b) or (d) of the GATT 1994 ensure the effective resolution of this dispute.

8.3. With respect to New Zealand's claims under Article III:4 of the GATT 1994, the Panel declines to rule because its findings pertaining to the inconsistency of Measures 6, 14 and 15 with Article XI:1 of the GATT 1994 and the absence of justification under Articles XX(a), (b) or (d) of the GATT 1994 ensure the effective resolution of this dispute.

8.4. Concerning the co-complainants' claims under Article 3.2 of the Import Licensing Agreement, the Panel declines to rule because its findings pertaining to the inconsistency of Measures 1 and 11 with Article XI:1 of the GATT 1994 ensure the effective resolution of this dispute.

8.5. The Panel further declines to rule on the United States' claims under Article III:4 of the GATT 1994 because, in the absence of any argumentation, the United States has failed to make a *prima facie* case. The Panel also declines to rule on the co-complainants' claims under Article 2.2(a) of the Import Licensing Agreement because, in the absence of any argumentation, the United States and New Zealand have failed to make a *prima facie* case.

8.6. 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 that Indonesia has acted inconsistently with Article XI:1 of the GATT 1994, it has nullified or impaired benefits accruing to New Zealand and the United States under that agreement.

8.7. Pursuant to Article 19.1 of the DSU, having found that Indonesia acted inconsistently with its obligations under Article XI:1 of the GATT 1994 with respect to Measures 1 through 18, we recommend that the DSB request Indonesia to bring its measures into conformity with its obligations under the GATT 1994.

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