

that all parties, including India as a developing country respondent, had sufficient time to prepare and submit their respective arguments. The Panel found that no other provisions on differential and more favourable treatment for developing country Members were relevant for the resolution of the matter in the dispute.

8 CONCLUSIONS AND RECOMMENDATION

8.1 Conclusions

8.1. For the reasons explained in this Report, the Panel concludes that the measure at issue resulted in a suspension of obligations incurred by India under the GATT 1994. This measure was adopted by India as a temporary emergency action designed to remedy an alleged situation of serious injury to the domestic industry brought about by an increase in imports of the subject products. We accordingly conclude that the provisions of Article XIX of the GATT 1994 and the Agreement on Safeguards are applicable to the examination of the claims raised in the present dispute.

8.2. The Panel concludes that India has acted inconsistently with the following provisions:

- a. Article XIX:1(a) of the GATT 1994, by failing to demonstrate that the increase in imports of the product concerned into India occurred as a result of unforeseen developments and the effect of relevant obligations of the GATT 1994;
- b. Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1 of the GATT 1994, in the determination on the increase in imports;
- c. Articles 4.1(a), 4.1(b), and 4.2(a) of the Agreement on Safeguards, with respect to the determination of serious injury and the threat of serious injury;
- d. Article 4.2(b), first and second sentences, of the Agreement on Safeguards, by failing to demonstrate the existence of a causal link between the increased imports and the alleged serious injury suffered by the domestic industry and by failing to conduct a proper non-attribution analysis;
- e. Articles 3.1 and 4.2(c) of the Agreement on Safeguards, by failing to provide reasoned conclusions on all pertinent issues of fact and law;
- f. Article 12.4 of the Agreement on Safeguards, by failing to notify the Committee on Safeguards before taking the provisional safeguard measure at issue;
- g. Article 12.2 of the Agreement on Safeguards, by failing to provide the Committee on Safeguards with a precise description of the product involved and a precise description of the proposed measure;
- h. Article 12.3 of the Agreement on Safeguards, by failing to provide Japan, and other Members with a substantial export interest in the product subject to the proposed safeguard measure, with adequate opportunity for prior consultations with a view to reviewing all pertinent information;
- i. Article II:1(b), second sentence, of the GATT 1994, by imposing measures on the importation of products which constitute "other duties or charges", which were not recorded in its Schedule of Concessions; and
- j. Article I of the GATT 1994, by having failed to extend immediately and unconditionally to the products of all WTO Members certain advantages granted to products originating in some countries. The discriminatory application of the measure at issue is not excused by Article 9.1 of the Agreement on Safeguards.

8.3. The Panel also concludes that Japan failed to demonstrate that India acted inconsistently with the following provisions:

- a. Articles 2.1, 4.1(a), 4.1(b), 4.1(c), 4.2(a), and 4.2(b) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, and consequentially Articles 3.1 and 4.2(c) of the Agreement on Safeguards, with respect to the determination of the domestic industry; and
- b. Articles 12.1(a), (b) and (c) and 12.2 of the Agreement on Safeguards, with respect to the notifications to the Committee on Safeguards of the initiation of a safeguard investigation relating to serious injury or threat thereof, the findings of serious injury in the investigation, and the decision to apply a definitive safeguard measure.

8.4. In light of the findings above, the Panel has exercised judicial economy with respect to the following claims:

- a. Japan's consequential claim that India acted inconsistently with Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 with regard to its assessment of the situation of the domestic industry;
- b. Japan's consequential claim that India acted inconsistently with Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 with respect to its causation and non-attribution analyses;
- c. Japan's claims under Articles 3.1, 4.2(c), 5.1, and 7.1 of the Agreement on Safeguards, and Japan's consequential claim under Article XIX:1(a) of the GATT 1994, with respect to the duration of the safeguard measure at issue and the level of the duties imposed; and
- d. Japan's consequential claim under Article 11.1(a) of the Agreement on Safeguards.

8.5. In accordance with Article 3.8 of the DSU, in cases when 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 of benefits accruing under the agreement in question. In view of the foregoing, the Panel concludes that, insofar as India has acted in a manner inconsistent with Article XIX:1 of the GATT 1994 and several provisions of the Agreement on Safeguards, it has nullified or impaired benefits accruing to Japan under those agreements.

8.2 Recommendation

8.6. Pursuant to Article 19.1 of the DSU, having found that India acted inconsistently with certain provisions of the GATT 1994 and the Agreement on Safeguards, we recommend that, to the extent that the measure continues to have any effects, India bring it into conformity with its obligations under those agreements.
