Article XIX:1(a) of the GATT 1994 and under the Agreement on Safeguards, a finding under Article II:1 would be superfluous.[466]

7.289. We note that Korea's claim under Article II:1 is purely consequential and is dependent on a finding of violation with respect to Korea's claims under Article XIX:1(a) and different provisions of the Agreement on Safeguards. We have upheld certain claims made by Korea under Article XIX:1(a) of the GATT 1994 as well as under the Agreement on Safeguards.

7.290. Based on the foregoing, we do not find it necessary to address Korea's claim under Article II:1 of the GATT 1994.

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, we conclude as follows:

a. With respect to Korea's claims under Article XIX:1(a) of the GATT 1994 and Articles 1 and 3.1 of the Agreement on Safeguards challenging the absence of a reasoned and adequate explanation on "unforeseen developments" and the "obligations incurred" by the United States, which would have resulted in the alleged increased imports of LRWs causing serious injury:

   i. We find that the USITC acted inconsistently with Article XIX:1(a) of the GATT 1994 and Article 3.1 of the Agreement on Safeguards because its report does not contain a reasoned and adequate explanation on "unforeseen developments" and the "obligations incurred" by the United States, within the meaning of Article XIX:1(a) of the GATT 1994. We do not find it necessary to address whether the USITC also acted inconsistently with Article 1 of the Agreement on Safeguards for these same reasons.

b. With respect to Korea's claims under Articles 2.1, 3.1, 4.1(c), 4.2(a), and 4.2(b) of the Agreement on Safeguards challenging the USITC's definition of the domestic industry:

   i. We find that the USITC acted inconsistently with Article 4.1(c) of the Agreement on Safeguards because it included LRW parts in the definition of the domestic industry based on (1) its finding of likeness between imported and domestically produced LRW parts; and (2) its application of the product line approach. We do not find it necessary to address whether the USITC also acted inconsistently with Article 2.1 for these same reasons.

   ii. We reject Korea's claim under Articles 3.1 and 4.1(c) of the Agreement on Safeguards, as well as Article 2.1 of the Agreement on Safeguards challenging the USITC's inclusion of belt-driven washers in the definition of the domestic industry.

   iii. We do not find it necessary to address Korea's consequential claims that as a consequence of the improper definition of the domestic industry, the USITC's determination of serious injury and causation was also inconsistent with Articles 2.1, 3.1, 4.1(c), 4.2(a), and 4.2(b) of the Agreement on Safeguards.

c. With respect to Korea's claims under Articles 2.1 and 3.1 of the Agreement on Safeguards challenging the USITC's findings on imports in such increased quantities:

   i. We find that the USITC acted inconsistently with Articles 2.1 and 3.1 of the Agreement on Safeguards because it failed to provide a reasoned and adequate explanation in support of its finding on increased imports.

   ii. We reject Korea's claim that the USITC acted inconsistently with Articles 2.1 and 3.1 of the Agreement on Safeguards by (1) cumulating imports of LRWs and LRW parts as part of its increased imports analysis; (2) failing to examine the significance of the increase in imports relative to domestic consumption; and (3) failing to account for

[466] United States' first written submission, para. 419.

the price and non-price based aspects of the conditions of competition in the market in its increased imports analysis.

d. With respect to Korea's claims under Articles 2.1, 3.1, 4.1(a), 4.2(a), and 4.2(c) of the Agreement on Safeguards challenging the USITC's findings on serious injury suffered by the domestic industry:

   i. We find that the USITC acted inconsistently with Articles 4.2(a) and 3.1 of the Agreement on Safeguards by excluding the profit and loss data of the producer of belt-driven washers from the profit data used to determine the profitability of the domestic industry. We do not find it necessary to separately address whether the USITC also acted inconsistently with Articles 2.1, 4.1(a), and 4.2(c) for these same reasons.

   ii. We reject, for the reasons set out in paragraph 7.119 above, Korea's claims under Article 4.2(a), as well as Articles 3.1, 4.1(a), and 4.2(c) of the Agreement on Safeguards that the USITC allegedly failed to objectively examine "profit and loss".

   iii. We reject Korea's claims under Article 4.2(a) of the Agreement on Safeguards that the USITC allegedly failed to objectively examine the share of the domestic market taken by increased imports.

   iv. We do not find it necessary to address Korea's claims under Article 4.2(a), as well as Articles 3.1, 4.1(a), and 4.2(c) of the Agreement on Safeguards that the USITC failed to evaluate all injury factors set out in Article 4.2(a).

   v. We do not find it necessary to address Korea's claims under Article 4.2(a), as well as Articles 2.1, 3.1, 4.1(a), and 4.2(c) of the Agreement on Safeguards that are consequential to Korea's claims challenging the USITC's definition of the domestic industry.

   vi. We do not find it necessary to address Korea's claims under Article 4.2(a), as well as Articles 3.1, 4.1(a), and 4.2(c) of the Agreement on Safeguards that the USITC failed to undertake an objective examination of the significant overall impairment of the domestic industry and based its overall finding of serious injury on one factor alone.

e. With respect to Korea's claims under Articles 2.1, 3.1, 4.2(b), and 4.2(c) of the Agreement on Safeguards challenging the USITC's findings on causation between subject imports and the serious injury to the domestic industry:

   i. We find that the USITC acted inconsistently with Articles 3.1 and 4.2(b) the Agreement on Safeguards because it (1) did not provide a reasoned and adequate explanation in support of its finding that subject imports depressed and suppressed prices of the domestic like product as a whole; and (2) did not make a finding on coincidence in trends in a manner consistent with Article 4.2(b). We do not find it necessary to separately address whether the USITC also acted inconsistently with Articles 2.1 and 4.2(c) for these same reasons.

   ii. We reject Korea's claims under Articles 3.1 and 4.2(b), as well as Articles 2.1, and 4.2(c) of the Agreement on Safeguards challenging the USITC's finding that (1) joint pricing of dryers and LRWs and (2) deterioration of US brands, were not factors causing injury to the domestic industry.

   iii. We reject Korea's claims under Articles 3.1 and 4.2(b), as well as Articles 2.1 and 4.2(c) of the Agreement on Safeguards challenging the USITC's application of the substantial cause test in the underlying investigation.

   iv. We do not find it necessary to address Korea's claims under Articles 3.1 and 4.2(b), as well as Articles 2.1 and 4.2(c) of the Agreement on Safeguards regarding the USITC's analysis of non-price related aspects of competition.

v. We do not find it necessary to address Korea's claims under Article 4.2(b), as well as Articles 2.1, 3.1, and 4.2(c) of the Agreement on Safeguards that are consequential to Korea's claims challenging the USITC's definition of the domestic industry and its determination on increased imports.

f. With respect to Korea's claims under Articles 5.1 and 7.1 of the Agreement on Safeguards:

i. We reject Korea's claim under Article 5.1 of the Agreement on Safeguards that is premised on Korea's view, which we have rejected, that the USITC found factors other than increased imports were causing injury to the domestic industry.

ii. We reject Korea's claim under Article 5.1 of the Agreement on Safeguards challenging the form and level of the United States' safeguard measure. To the extent Korea's claim is premised on its view that the duty on out-of-quota LRW parts was not necessary under Article 5.1, for the reasons set out in paragraph 7.226 above, we do not find it necessary to address this aspect of Korea's claim.

iii. We reject Korea's claim under Article 5.1 of the Agreement on Safeguards that the United States acted inconsistently with this provision in failing to take into account existing import restrictions from anti-dumping and countervailing measures.

iv. We reject Korea's claim under Articles 5.1 and 7.1 of the Agreement on Safeguards that the United States failed to limit the safeguard measure to what was necessary to remedy injury and facilitate adjustment.

v. We do not find it necessary to address Korea's claim under Article 5.1 of the Agreement on Safeguards that is consequential to Korea's claim challenging the USITC's determination on causation.

g. With respect to Korea's claims under Articles 12.1 and 12.2 of the Agreement on Safeguards:

i. We reject Korea's claims under Articles 12.1(a), 12.1(b), and 12.1(c) of the Agreement on Safeguards that the United States allegedly failed to "immediately" notify its initiation notification, serious injury notification, and decision notification to the Committee on Safeguards.

ii. We reject Korea's claims under Article 12.2 of the Agreement on Safeguards that the United States allegedly failed to provide "all pertinent information" in its serious injury notification and its decision notification.

h. With respect to Korea's claims under Articles 8.1 and 12.3 of the Agreement on Safeguards, we find that the United States acted inconsistently with Article 12.3 because it failed to provide Korea with adequate opportunity for prior consultations under Article 12.3 of the Agreement on Safeguards. We find that as a consequence of this violation under Article 12.3, the United States also acted inconsistently with Article 8.1 of the Agreement on Safeguards.

i. With respect to Korea's claim under Article 11.1(a) of the Agreement on Safeguards, we do not find it necessary to address this claim.

j. With respect to Korea's claim under Article II.1 of the GATT 1994, we do not find it necessary to address this claim.

8.2. 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 Article XIX:1(a) of the GATT 1994 and several provisions of the Agreement on Safeguards, it has nullified or impaired benefits accruing to Korea under these agreements.

8.3. Pursuant to Article 19.1 of the DSU, we recommend that the United States bring its measure into conformity with its obligations under Article XIX:1(a) of the GATT 1994 and the Agreement on Safeguards.