

D. *Conclusion*

401. In the light of the above, we *reverse* the Panel's finding, in paragraph 7.693 of the Panel Report, that the AIDCP is "open to the relevant body of every country and is therefore an international standardizing organization" for the purposes of Article 2.4 of the *TBT Agreement*. We also *reverse* the Panel's finding, in paragraph 7.707 of the Panel Report, that the "AIDCP dolphin-safe definition and certification" constitute a "relevant international standard" within the meaning of the *TBT Agreement*. In the light of this, the Panel's finding, in paragraph 8.1(c) of the Panel Report, that the measure at issue is not inconsistent with Article 2.4 of the *TBT Agreement* stands.

⁷⁶²As pointed out by the United States at the oral hearing, Mexico itself has encountered difficulties in joining another fisheries management organization, the Western and Central Pacific Fisheries Commission (WCPFC). (See Panel Report, footnote 505 to para. 7.327)

⁷⁶³Having found that the AIDCP is not "international" for the purposes of the *TBT Agreement*, we do not need to address the question of whether the AIDCP is a "body" and has "recognized activities in standardization".

IX. Mexico's Claims under Articles I:1 and III:4 of the GATT 1994

402. Mexico submits that the Panel erred in exercising judicial economy with respect to Mexico's claims under Articles I and III of the GATT 1994, thereby acting inconsistently with its obligations under Article 11 of the DSU, and requests the Appellate Body to complete the legal analysis by ruling on these claims.⁷⁶⁴ The United States counters that the Panel "addressed 'all aspects of Mexico's claims, including non-discrimination aspects under Article 2.1, and other aspects under Article[s] 2.2 and 2.4', such that it was not 'necessary for it to consider separately and additionally Mexico's claims under Articles I:1 and III:4 of the GATT 1994.'"⁷⁶⁵ The United States further submits that Mexico has not explained why the use of judicial economy by the Panel is a failure to assist the DSB in making recommendations and rulings that would help settle the dispute.⁷⁶⁶

403. We recall that the principle of judicial economy "allows a panel to refrain from making multiple findings that the same measure is *inconsistent* with various provisions when a single, or a certain number of findings of inconsistency, would suffice to resolve the dispute."⁷⁶⁷ Consequently, "[a] panel need only address those claims which must be addressed in order to resolve the matter in issue in the dispute."⁷⁶⁸ Nonetheless, the Appellate Body also cautioned that:

[t]he principle of judicial economy has to be applied keeping in mind the aim of the dispute settlement system. This aim is to resolve the matter at issue and "to secure a positive solution to a dispute". To provide only a partial resolution of the matter at issue would be false judicial economy. A panel has to address those claims on which a finding is necessary in order to enable the DSB to make sufficiently precise recommendations and rulings so as to allow for prompt compliance by a Member with those recommendations and rulings "in order to ensure effective resolution of disputes to the benefit of all Members."⁷⁶⁹ (footnotes omitted)

404. Accordingly, "panels may refrain from ruling on every claim as long as it does not lead to a 'partial resolution of the matter'."⁷⁷⁰

405. To us, it seems that the Panel's decision to exercise judicial economy rested upon the assumption that the obligations under Article 2.1 of the *TBT Agreement* and Articles I:1 and III:4 of the GATT 1994 are substantially the same. This assumption is, in our view, incorrect. In fact, as we have found above, the scope and content of these provisions is not the same. Moreover, in our view,

⁷⁶⁴Mexico's other appellant's submission, paras. 206 and 211.

⁷⁶⁵United States' appellee's submission, para. 110 (quoting Panel Report, para. 7.748).

⁷⁶⁶United States' appellee's submission, para. 112.

⁷⁶⁷Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 133. (original emphasis)

⁷⁶⁸Appellate Body Report, *US – Wool Shirts and Blouses*, p. 19, DSR 1997:I, 323, at 340.

⁷⁶⁹Appellate Body Report, *Australia – Salmon*, para. 223.

⁷⁷⁰Appellate Body Report, *US – Upland Cotton*, para. 732.

the Panel should have made additional findings under the GATT 1994 in the event that the Appellate Body were to disagree with its view that the measure at issue is a "technical regulation" within the meaning of the *TBT Agreement*. As a result, it would have been necessary for the Panel to address Mexico's claims under the GATT 1994 given that the Panel found no violation under Article 2.1 of the *TBT Agreement*. By failing to do so, the Panel engaged, in our view, in an exercise of "false judicial economy" and acted inconsistently with its obligations under Article 11 of the DSU.⁷⁷¹

406. In response to questioning at the oral hearing in this appeal, Mexico explained that it was not requesting that we complete the legal analysis by ruling on Mexico's claims under the GATT 1994 if we were to find the US measure to be *inconsistent* with Article 2.1 of the *TBT Agreement*. As we have found the US "dolphin-safe" labelling provisions to be inconsistent with Article 2.1, we consider it not necessary for us to complete the legal analysis in this case. Accordingly, we make no finding in relation to Mexico's separate claims that the US "dolphin-safe" labelling provisions are inconsistent with Article I:1 and Article III:4 of the GATT 1994.

X. Findings and Conclusions

407. For the reasons set out in this Report, the Appellate Body:

- (a) finds that the Panel did not err in characterizing the measure at issue as a "technical regulation" within the meaning of Annex 1.1 to the *TBT Agreement*;
- (b) finds that the Panel erred in its interpretation and application of the phrase "treatment no less favourable" in Article 2.1 of the *TBT Agreement*; reverses the Panel's finding, in paragraphs 7.374 and 8.1(a) of the Panel Report, that the US "dolphin-safe" labelling provisions are not inconsistent with Article 2.1 of the *TBT Agreement*; and finds instead that the US "dolphin-safe" labelling provisions are inconsistent with Article 2.1 of the *TBT Agreement*;
- (c) finds that the Panel erred in concluding, in paragraphs 7.620 and 8.1(b) of the Panel Report, that it has been demonstrated that the measure at issue is more trade restrictive than necessary to fulfil the United States' legitimate objectives, taking account of the risks non-fulfilment would create; and therefore reverses the Panel's finding that the measure at issue is inconsistent with Article 2.2 of the *TBT Agreement*;

⁷⁷¹ Appellate Body Report, *Australia – Salmon*, para. 223.

- (d) rejects Mexico's claim that the Panel erred in finding that the United States' objective of "contributing to the protection of dolphins, by ensuring that the US market is not used to encourage fishing fleets to catch tuna in a manner that adversely affects dolphins" is a legitimate objective within the meaning of Article 2.2 of the *TBT Agreement*;
- (e) rejects Mexico's request to find the measure at issue inconsistent with Article 2.2 of the *TBT Agreement* based on the Panel's finding that the measure did not entirely fulfil its objectives;
- (f) reverses the Panel's finding, in paragraph 7.707 of the Panel Report, that the "AIDCP dolphin-safe definition and certification" constitute a "relevant international standard" within the meaning of Article 2.4 of the *TBT Agreement*. In the light of this, the Panel's finding, in paragraph 8.1(c) of the Panel Report, that the measure at issue is not inconsistent with Article 2.4 of the *TBT Agreement* stands; and
- (g) finds that the Panel acted inconsistently with Article 11 of the DSU in deciding to exercise judicial economy with respect to Mexico's claims under Articles I:1 and III:4 of the GATT 1994.

408. The Appellate Body *recommends* that the DSB request the United States to bring its measure, found in the Panel Report, as modified by this Report, to be inconsistent with the *TBT Agreement*, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 1st day of May 2012 by:

Yuejiao Zhang
Presiding Member

Ujal Singh Bhatia
Member

Thomas R. Graham
Member