

IX. CONCLUSIONS AND RECOMMENDATION

9.1 For the reasons indicated in this report, the Panel has determined that, under the DSU, it has no discretion to decline to exercise its jurisdiction in the case that has been brought before it.

9.2 With respect to the United States' claims, the Panel concludes as follows:

(a) With respect to Mexico's soft drink tax and distribution tax:

- (i) As imposed on sweeteners, imported beet sugar is subject to internal taxes in excess of those applied to like domestic sweeteners, in a manner inconsistent with Article III:2, first sentence, of the GATT 1994;
- (ii) As imposed on sweeteners, imported HFCS is being taxed dissimilarly compared with the directly competitive or substitutable products, so as to afford protection to the Mexican domestic production of cane sugar, in a manner inconsistent with Article III:2, second sentence, of the GATT 1994;
- (iii) As imposed on sweeteners, imported beet sugar and HFCS are accorded less favourable treatment than that accorded to like products of national origin, in a manner inconsistent with Article III:4 of the GATT 1994;
- (iv) As imposed on soft drinks and syrups, imported soft drinks and syrups sweetened with non-cane sugar sweeteners (including HFCS and beet sugar) are subject to internal taxes in excess of those applied to like domestic products, in a manner inconsistent with Article III:2, first sentence, of the GATT 1994.

(b) With respect to Mexico's bookkeeping requirements: As imposed on sweeteners, imported beet sugar and HFCS are accorded less favourable treatment than that accorded to like products of national origin, in a manner inconsistent with Article III:4 of the GATT 1994.

9.3 With respect to Mexico's invocation of Article XX(d) of the GATT 1994, the Panel concludes that the challenged tax measures are not justified as measures that are necessary to secure compliance by the United States with laws or regulations which are not inconsistent with the provisions of the GATT 1994.

9.4 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. The Panel concludes that, to the extent that the measures listed above are inconsistent with the GATT 1994, they have nullified or impaired benefits accruing to the United States under that agreement.

9.5 Having concluded that it has no discretion to depart from the procedure stated in Article 19.1 of the DSU, the Panel recommends that the Dispute Settlement Body request Mexico to bring the inconsistent measures as listed above into conformity with its obligations under the GATT 1994.
