

VII. Findings and Conclusions

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

- (a) With respect to Article 2.1 of the *TBT Agreement*:
 - (i) upholds, albeit for different reasons, the Panel's finding, in paragraph 7.248 of the Panel Report, that clove cigarettes and menthol cigarettes are "like products" within the meaning of Article 2.1 of the *TBT Agreement*;
 - (ii) finds that the Panel did not act inconsistently with Article 11 of the DSU in its analysis of consumer tastes and habits;
 - (iii) upholds, albeit for different reasons, the Panel's finding, in paragraph 7.292 of the Panel Report, that, by banning clove cigarettes while exempting menthol cigarettes from the ban, Section 907(a)(1)(A) of the FFDCA accords imported clove cigarettes less favourable treatment than that accorded to domestic menthol cigarettes, within the meaning of Article 2.1 of the *TBT Agreement*;

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Section 907(a)(1)(A) of the FFDCA, the United States acted inconsistently with Article 2.12 of the *TBT Agreement*.

299. The Appellate Body recommends that the DSB request the United States to bring its measure, found in this Report, and 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 22nd day of March 2012 by:

Shotaro Oshima
Presiding Member

Ricardo Ramírez-Hernández
Member

Peter Van den Bossche
Member