



6.3. For the reasons set out in section 5.3.2 of this Report, with respect to Article II:1(b) of the GATT 1994, the Appellate Body:

- a. finds that Peru has not established that the Panel erred in finding that the measure at issue is not an "ordinary customs duty" under the first sentence of Article II:1(b) of the GATT 1994; and
- b. finds that the Panel did not act inconsistently with Article 11 of the DSU in its examination of Guatemala's claim under Article II:1(b) of the GATT 1994.

6.4. For the reasons set out in section 5.3.3 of this Report, with respect to the interpretation of Article 4.2 of the Agreement on Agriculture and Article II:1(b) of the GATT 1994 in accordance with Article 31 of the Vienna Convention, the Appellate Body:

- a. finds that Peru's arguments regarding the interpretation of Article 4.2 of the Agreement on Agriculture and Article II:1(b) of the GATT 1994 in accordance with Article 31(3)(a) and (c) of the Vienna Convention are within the scope of this appeal;
- b. finds that Peru's arguments, that the Panel erred in its interpretation of Article 4.2 of the Agreement on Agriculture and Article II:1(b) of the GATT 1994 because it failed to take into account under Article 31(3) of the Vienna Convention the FTA and ILC Articles 20 and 45, go beyond the interpretation of Article 4.2 and Article II:1(b) in accordance with Article 3.2 of the DSU and Article 31 of the Vienna Convention and amount to arguing that, by means of the FTA, Peru and Guatemala actually modified these WTO provisions between themselves;
- c. finds that the FTA between Peru and Guatemala and ILC Articles 20 and 45 are not "relevant" to the interpretation of Article 4.2 of the Agreement on Agriculture and Article II:1(b) of the GATT 1994 within the meaning of Article 31(3)(c) of the Vienna Convention and that the FTA is not a subsequent agreement "regarding the interpretation" of these WTO provisions within the meaning of Article 31(3)(a); and, therefore,
- d. finds that the Panel did not commit an error by not interpreting Article 4.2 of the Agreement on Agriculture and Article II:1(b) of the GATT 1994 taking into account the provisions of the FTA and ILC Articles 20 and 45 under Article 31(3) of the Vienna Convention.

