

### 5.4.3 Conclusions

5.101. As discussed above, the normal sequence of analysis under Article XX of the GATT 1994 involves, first, an assessment of whether the measure at issue is provisionally justified under one of the paragraphs of Article XX and, second, an assessment of whether that measure also meets the requirements of the chapeau of Article XX. This reflects "the fundamental structure and logic of Article XX".<sup>256</sup> It also comports with the function of the chapeau of Article XX, which is "to prevent abuse of the exceptions specified in the paragraphs of that provision"<sup>257</sup>, and to ensure that a balance is struck between the right of a Member to invoke an exception under Article XX and the substantive rights of other Members under the GATT 1994.<sup>258</sup> Depending on the particular circumstances of the case, a panel that deviates from the sequence of analysis under Article XX might not necessarily, for that reason alone, commit a reversible legal error provided the panel has made findings on those elements under the applicable paragraphs that are relevant for its analysis of the requirements of the chapeau. However, following the normal sequence of analysis under Article XX provides panels with the necessary tools to assess the requirements of the chapeau.

5.102. Having made these observations, we note Indonesia's contention that it would not be possible for us to complete the legal analysis to determine whether Measures 9 through 17 are justified under Article XX(a), (b), or (d)

as quantitative restrictions. Both provisions contain the same substantive obligations in relation to these claims<sup>263</sup> and, thus, in these circumstances, they apply cumulatively. Moreover, there is no mandatory sequence of analysis between Article 4.2 of the Agreement on Agriculture and Article XI:1 of the GATT 1994 in this dispute, and the decision as to whether to commence the analysis with the claims under Article XI:1 or those under Article 4.2 was within the Panel's margin of discretion. We also consider that Indonesia has not substantiated its claim under Article 11 of the DSU that the Panel failed to make an objective assessment of the applicability of Article 4.2 of the Agreement on Agriculture.

- a. Therefore, we reject Indonesia's claim that the Panel erred in assessing the claims regarding the measures at issue under Article XI:1 of the GATT 1994, rather than Article 4. (T)n ( t)- t ( )Tj 0.0040 112.4 (ia)7 3 ( A)8 (gr)4.3 (iw 15 3.t3 (iw 83J 0F2 ( o)42.3 (8.7 (r

6.3 Indonesia's alternative claim that the Panel erred in finding that Article XI:2(c) of the GATT 1994 has been rendered "inoperative" by Article 4.2 of the Agreement on Agriculture

6.5. We disagree with Indonesia that agricultural measures maintained under Article XI:2(c) of the GATT 1994 are not "quantitative import restrictions" within the meaning of the first part of footnote 1 to Article 4.2 of the Agreement on Agriculture.

- a. Therefore, we find that the prohibition of "quantitative import restrictions" under Article 4.2 of the Agreement on Agriculture extends to measures satisfying the requirements of Article XI:2(c) of the GATT 1994.
- b. We further find that, by virtue of Article 21.1 of the Agreement on Agriculture, Article XI:2(c) of the GATT 1994 cannot be relied upon to justify or exempt quantitative import restrictions that are inconsistent with Article 4.2 of the Agreement on Agriculture.

6.6. In addition, the Panel's findings that Measures 4, 7, and 16 are quantitative restrictions on the importation of agricultural products inconsistent with Article XI:1 of the GATT 1994 would lead to the conclusion that these measures also fall within the prohibition of quantitative import restrictions under Article 4.2 of the Agreement on Agriculture. This conclusion does not change regardless of whether Article XI:2(c) is being invoked by Indonesia in relation to Article XI:1 or Article 4.2.

- a. Consequently, we uphold the Panel's finding, in paragraph 7.60 of the Panel Report, to the extent that it states that, by virtue of Article 21.1 of the Agreement on Agriculture, Article XI:2(c) of the GATT 1994 cannot be relied upon to justify or exempt measures falling within the prohibition of quantitative import restrictions under Article 4.2 of the Agreement on Agriculture.

6.4 Indonesia's claim under Article XX of the GATT 1994

6.7. The normal sequence of analysis under Article XX of the GATT 1994 involves, first, an assessment of whether the measure at issue is provisionally justified under one of the paragraphs of Article XX and, second, an assessment of whether that measure also meets the requirements of the chapeau of Article XX. This reflects "the fundamental structure and logic of Article XX".<sup>265</sup> It also comports with the function of the chapeau of Article XX, which is "to prevent abuse of the exceptions specified in the paragraphs of that provision"<sup>266</sup>, and to ensure that a balance is struck between the right of a Member to invoke an exception under Article XX and the substantive rights of other Members under the GATT 1994.<sup>267</sup> Depending on the particular circumstances of the case, a panel that deviates from the se[arT

completing the legal analysis, the Panel's findings that these measures are inconsistent with Article XI:1 of the GATT 1994 would remain undisturbed. For this reason, we consider that a ruling on Indonesia's claim on appeal under Article XX is unnecessary for the purposes of resolving this dispute.

- a. Therefore, we decline to rule on Indonesia's claim on appeal under Article XX of the GATT 1994 and declare the Panel's finding that "Indonesia ha[d] failed to demonstrate that Measures 9 through 17 are justified under Articles XX(a), (b) or (d) of the GATT 1994, as appropriate", in paragraph 7.830 of the Panel Report<sup>269</sup>, moot and of no legal effect.

## 6.5 Recommendation

6.9. The Appellate Body recommends that the DSB request Indonesia to bring its measures, found in this Report, and in the Panel Report as modified by this Report, to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 12th day of October 2017 by: