

# INDIA – AUTOS<sup>1</sup>

(DS146, 175)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	United States European Communities	GATT Arts. III, XI and XVIII:B  DSU Art. 19.1	Establishment of Panel	27 July 2000 (US), 17 November 2000 (EC)
			Circulation of Panel Report	21 December 2001
Respondent	India		Circulation of AB Report <sup>a</sup>	19 March 2002
			Adoption	5 April 2002

## 1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: India's (i) indigenization (local content) requirement; and (ii) trade balancing requirement (exports value = imports value) imposed on its automotive sector.<sup>2</sup>
- Product at issue: Cars and their components.

## 2. SUMMARY OF KEY PANEL/AB FINDINGS

### *Indigenization requirement*

- GATT Art. III:4 (national treatment): The Panel concluded that the measure violated Art. III:4, as the indigenization requirement modified the conditions of competition in the Indian market "to the detriment of imported car parts and components".

### *Trade balancing requirement*

- GATT Art. XI:1 (restriction on importation): Having found that "any form of limitation imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Art. XI", the Panel found that India's trade balancing requirement, which limited the amount of imports in relation to an export commitment, acted as a restriction on importation within the meaning of Art. XI:1, and thus violated Art. XI:1. The Panel also found that India failed to make a prima facie case that this requirement was justified under the balance-of-payments provisions of Art. XVIII:B.
- GATT Art. III:4: As for the aspect of the trade balancing obligations, which imposed on the purchasers of imported components on the Indian market an additional obligation to export cars or components, the Panel found that the measure created a "disincentive" to the purchase of imported products and, thus, accorded less favourable treatment to imported products than to like domestic products inconsistently with Art. III:4.

## 3. OTHER ISSUES<sup>3</sup>

- Evolution of the measures: As to India's claim that since the import regime that gave rise to the two requirements had already expired, and thus the Panel need not recommend to the DSB that India should bring its measures into conformity, the Panel said that where a measure has been withdrawn so as to affect the continued relevance of the Panel's findings of violation, it is understandable for a panel to make no recommendation at all. However, the Panel found the situation in this case different, as the expiration of the import regime subsequent to the Panel's establishment did not affect the continued application of the measures. As such, the Panel recommended that the DSB request that India bring its measures into conformity with its WTO obligations.
- GATT Arts. III and XI (measures): Regarding the scope of measures under (and thus the relationship between) Arts. III and XI, the Panel noted that it could not be excluded that there may be a potential overlap between these two provisions and thus a certain measure may fall under both provisions.

<sup>1</sup> *India – Measures Affecting the Automotive Sector*

<sup>a</sup> India withdrew its appeal prior to the oral hearing. For this reason the Appellate Body issued a short report, which did not address the substantive legal issues, and which adopted by the DSB together with the Panel Report.

<sup>2</sup> Both requirements were contained in Public Notice No. 60 and the MOUs signed between Indian government and car manufacturers.

<sup>3</sup> Other issues addressed in this case: burden of proof (GATT Art. XVIII:B); clarification of claims; terms of reference (measure at issue); *res judicata*; competence of panel (bilateral settlement); due process and good faith; unnecessary litigation; order of examination of claims under Arts. III and XI.