

## EC – SELECTED CUSTOMS MATTERS<sup>1</sup>

### (DS315)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	<i>United States</i>	<i>GATT Art. X:3(a) and (b)</i>	Establishment of Panel	<i>21 March 2005</i>
			Circulation of Panel Report	<i>16 June 2006</i>
Respondent	<i>European Communities</i>	<i>DSU</i>	Circulation of AB Report	<i>13 November 2006</i>
			Adoption by the DSB	<i>11 December 2006</i>

#### 1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: The European Communities' administration of various customs laws and regulations, and the omission of the European Communities to provide for the prompt review and correction of administrative actions relating to customs matters.

#### 2. SUMMARY OF KEY PANEL/APPELLATE BODY FINDINGS<sup>2</sup>

Panel's terms of reference

- Measure at issue (Art. X:3(a)): The Appellate Body reversed the Panel's finding that when a violation of GATT Art. X:3(a) is being claimed, the "measure at issue" must be the "manner of administration" of a legal instrument; a WTO Member is not precluded from setting out in a panel request any act or omission attributable to another WTO Member as the measure at issue.
- The European Communities' system as a whole: The Panel rejected the United States' Art. X:3(a) challenge of European Communities' customs administration *overall*, on the grounds, *inter alia*, that the words "including, but not limited to" in its panel request did not have the legal effect of incorporating into the Panel's terms of reference *all* areas of European Communities' customs administration. The Appellate Body reversed the Panel, finding instead that the type of customs instruments included in the panel request, as well as its wording and intent, demonstrated the United States' intention to make an *as a whole or overall* challenge.
- As such challenge: The Panel concluded that the United States was precluded from making an *as such* challenge with respect to the "design and structure" of the European Communities' system of customs administration as its panel request made no explicit reference to the terms *as such* or *per se* and indicated only a concern with administration and actions by member State customs authorities. The Appellate Body did not agree that the United States was making an *as such* claim since the challenge was not to the substantive content of the relevant European Communities customs legislation in panel request, but to the overall system of customs administration. Further, the United States' arguments regarding "design and structure" were made in support of its *as a whole* challenge, which the Appellate Body had already found to be sufficiently disclosed in the panel request.

*GATT Art. X:3(a)*

- GATT Art. X:3(a) (uniform administration): Regarding the requirement of "uniform administration" in Art. X:3(a), the Appellate Body found that a distinction must be made between the legal instrument being administered and a legal instrument that regulates the application or implementation of that instrument. The Appellate Body reversed the Panel's finding that, without exception, Art. X:3(a) relates to the application of laws and regulations, but not to laws and regulations *as such*. Instead, the Appellate Body found that legal instruments that regulate the application or implementation of laws, regulations, decisions, and administrative rulings of the kind described in GATT Art. X:1 can be challenged under Art. X:3(a).

*GATT Art. X:3(b)*

- Art. X:3(b) of the GATT 1994 (review of administrative action on customs matters): The Appellate Body upheld the Panel's finding that GATT Art. X:3(b) does not require that first instance review decisions must govern the practice of *all* the agencies entrusted with administrative enforcement *throughout the territory* of a particular WTO Member.

<sup>1</sup> *European Communities – Selected Customs Matters*

<sup>2</sup> Other issues addressed: GATT Arts. XXIV:12; DSU Arts. 6.2, 12 and 13; temporal limitations of a panel's terms of reference