

PHILIPPINES – DISTILLED SPIRITS¹

(DS396, 403)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	European Union, United States	GATT Art. III:2, first and second sentences	Establishment of Panel	19 January 2010 (European Union) 20 April 2010 (United States)
			Circulation of Panel Report	15 August 2011
Respondent	Philippines		Circulation of AB Report	21 December 2011
			Adoption	20 January 2012

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Philippines excise tax on distilled spirits, which imposed different tax rates depending on the raw material used to make the spirit.
- **Product at issue:** Domestic and imported distilled spirits, including specific types of spirits, such as gin, brandy, rum, vodka, whisky, and tequila or tequila-flavoured spirits.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. III:2 (national treatment – taxes and charges), first sentence (like products):** The Appellate Body upheld the Panel's finding that each type of imported distilled spirit at issue in this dispute – gin, brandy, vodka, whisky, and tequila – made from non-designated raw materials was "like" the same type of domestic distilled spirit made from designated raw materials, within the meaning of Art. III:2, first sentence. Accordingly, the Appellate Body upheld the Panel's finding that, through its excise tax, the Philippines subjected specific types of imported distilled spirits to internal taxes in excess of those applied to like domestic spirits of the same type made from designated raw materials in violation of Art. III:2, first sentence.

The Appellate Body, however, reversed the Panel's additional finding that all distilled spirits at issue in the dispute, irrespective of their raw material base and their origin or type (brandy, whisky, rum, gin, vodka, tequila, and tequila-flavoured spirits), were "like products" within the meaning of Art. III:2, first sentence.

- **GATT Art. III:2 (national treatment – taxes and charges), second sentence (directly competitive or substitutable products):** The Appellate Body upheld the Panel's finding that that, through its excise tax, the Philippines applied dissimilar internal taxes on domestic and imported distilled spirits ; domestic distilled spirits made from designated raw materials and imported distilled spirits made from other raw materials were found to constitute directly competitive or substitutable products. The Philippines was thus found to have applied dissimilar internal taxes in a manner so as to afford protection to the Philippine domestic production of distilled spirits in violation of Art. III:2, second sentence.

3. OTHER ISSUES

- **Alternative vs independent claim:** The Appellate Body reversed the Panel's finding that the European Union's claim under GATT Art. III:2, second sentence, had only been made in the alternative; the Appellate Body reviewed the EU panel request and the EU responses to the Panel's questions and concluded that the EU claim under Art. III:2, second sentence "could not have been properly understood as having been made in the 'alternative,' that is, to be addressed only if the Panel were to reject the European Union's claim under the first sentence of that provision." The Appellate Body thus found that, by failing to examine this separate and independent claim, the Panel acted inconsistently with its duties under DSU Art. 11 and completed the legal analysis in relation to the European Union's claim under GATT Art. III:2, second sentence.

¹ Philippines – Taxes on Distilled Spirits