

INDIA – QUANTITATIVE RESTRICTIONS¹

(DS90)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	United States	GATT Arts. XI and XVIII	Establishment of Panel	18 November 1997
			Circulation of Panel Report	6 April 1999
Respondent	India	AA Art. 4.2	Circulation of AB Report	23 August 1999
			Adoption	22 September 1999

1. MEASURE AND PRODUCT AT ISSUE

- Measures at issue: India's import restrictions that India claimed were maintained to protect its balance-of-payments (BOP) situation under GATT Art. XVIII: import licensing system, imports canalization through government agencies and actual user requirement for import licences.
- Products at issue: Imported products subject to India's import restrictions: 2,714 tariff lines within the eight-digit level of the HS (710 out of which were agricultural products).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- GATT Art. XI:1 (quantitative restrictions): The Panel found, based on the broad scope of a general ban on import restrictions embodied in Art. XI:1, that India's measures, including its discretionary import licensing system, were quantitative restrictions inconsistent with GATT Art. XI:1.
- GATT Art. XVIII:11 (balance-of-payment ("BOP")): The Panel found that as India's monetary reserves were adequate, and, thus, India's BOP measures were not necessary to forestall the threat of, or to stop, a serious decline in its monetary reserves within the meaning of Art. XVIII:9, India had violated Art. XVIII:11, second sentence, which provides that measures may only be maintained to the extent necessary under Art. XVIII:9.
- Justifications under GATT Art. XVIII:11 (Ad Note and Proviso): Since a removal of India's BOP measures would not immediately produce the conditions contemplated in Art. XVIII:9 justifying the maintenance of import restrictions, the Appellate Body upheld the Panel's finding that India's measures were not justified under Note *Ad* Art. XVIII:11. Also, the Appellate Body upheld the Panel in finding that since India was not being required to change its development policy, it was not entitled to maintain its BOP measures on the basis of proviso to Art. XVIII:11.
- AA Art. 4.2: The Panel found that the measures violated the obligation under Art. 4.2 not to maintain measures of the kind required to be converted into ordinary customs duties and that they could not be justified under footnote 1 to Art. 4.2 either since the measures were not "measures maintained under balance-of-payments provisions".

3. OTHER ISSUES²

- Burden of proof (GATT Art. XVIII): The Appellate Body upheld the Panel's findings that the burden of proof with respect to Art. XVIII:11 proviso is on the defending party (as an affirmative defence), and with respect to the Note *Ad* Art. XVIII:11 on the complaining party.
- Competence of panels to review BOP measures: The Appellate Body held that dispute settlement panels are competent to review any matters concerning BOP restrictions, and rejected India's argument that a principle of institutional balance requires that matters relating to BOP restrictions be left to the relevant political organs – the BOP Committee and the General Council.

¹ *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*

² Other issues addressed in this case: special and different treatment for developing countries (DSU Art. 12.10 and 21.2, GATT Art. XVIII:B); consultation with the IMF (DSU Art. 13.1 and GATT Art. XV:2); terms of reference; objective assessment of the matter (DSU Art. 11).