

#### 7.4.8.4 Conclusion

7.458. Based on the foregoing, we find that, at the time of the Panel's establishment, India's tariff treatment of electric conductors, for a voltage not exceeding 80 V, of a kind used for telecommunications, fitted with connectors, falling within the scope of tariff item 8544.42.00 ex01 of India's WTO Schedule, was inconsistent with Article II:1(b), first sentence, of the GATT 1994, because such products were subject to ordinary customs duties in excess of those set forth and provided in India's WTO Schedule, unless they satisfied certain conditions not set forth in that WTO Schedule.

7.459. We recall that the application of ordinary customs duties in excess of those provided for in a Member's Schedule, or subject to terms, conditions or qualifications not set forth in the Schedule, inconsistent with the first sentence of Article II:1(b), also constitutes "less favourable" treatment within the meaning of Article II:1(a). Consequently, we find that, at the time of the Panel's establishment, India's tariff treatment of such products was less favourable than that provided in its WTO Schedule, and India was therefore acting inconsistently with Article II:1(a) of the GATT 1994.

7.460. We also find that, as of 1 February 2022, India accords unconditional duty-free treatment to such products, in accordance with the terms of its WTO Schedule, and is therefore acting consistently with Article II:1(b), first sentence, of the GATT 1994. Furthermore, by according to the commerce of the European Union treatment no less favourable than that provided for in its WTO Schedule, India's tariff treatment of such products is consistent with Article II:1(a) of the GATT 1994.

## 8 CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, we conclude as follows:

- a. With respect to India's assertions concerning its WTO tariff commitments, we find that:
  - i. The ITA is not a covered agreement within the meaning of the WTO Agreement and the DSU, does not set forth India's legal obligations at issue in this dispute, and does not otherwise limit the scope of India's tariff commitments as set forth in its WTO Schedule;
  - ii. The circumstances of this case do not satisfy the substantive requirements of Article 48 of the Vienna Convention, and we therefore decline to read aspects of India's WTO Schedule as invalid; and
  - iii. India's request for findings that the European Union acted inconsistently with the 1980 Decision is not within our terms of reference, and we consequently do not have the legal mandate to make such findings.
- b. With respect to the European Union's claims that India's tariff treatment of certain products is inconsistent with Articles II:1(a) and (b) of the GATT 1994, we find that:
  - i. India's tariff treatment of certain products classified under tariff items 8504.40 ex02, 8517.12, 8517.61, 8517.62 and 8517.70 ex01, ex02, and ex03 of India's WTO Schedule is inconsistent with Articles II:1(a) and (b) of the GATT 1994;
  - ii. At the time of the Panel's establishment, India's tariff treatment of certain products classified under tariff items 8518.30 ex01 and 8544.42.00 ex01 of India's WTO Schedule was inconsistent with Articles II:1(a) and (b) of the GATT 1994; and
  - iii. As of 1 February 2022, India's tariff treatment of certain products classified under tariff items 8518.30 ex01 and 8544.42.00 ex01 of India's WTO Schedule is consistent with Articles II:1(a) and (b) of the GATT 1994.

8.2. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are

inconsistent with Articles II:1(a) and (b) of the GATT 1994, they have nullified or impaired benefits accruing to the European Union under that agreement.

8.3. Pursuant to Article 19.1 of the DSU, to the extent that India's tariff treatment of certain products classified under tariff items 8504.40 ex02, 8517.12, 8517.61, 8517.62, 8517.70 ex01, ex02, and ex03 of India's WTO Schedule continues to be inconsistent with Articles II:1(a) and (b) of the GATT 1994, we recommend that India bring such measures into conformity with its obligations under the GATT 1994.

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