

# CHINA – AUTO PARTS<sup>1</sup>

(DS339, 340, 342)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	United States, European Communities, Canada	GATT Arts. II, III:2, III:4, XX(d) China's Accession Working Party Report	Establishment of Panel	26 October 2006
			Circulation of Panel Report	18 July 2008
Respondent	China		Circulation of AB Report	15 December 2008
			Adoption	12 January 2009

## 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Three legal instruments enacted by China<sup>2</sup> which impose a 25 per cent “charge”<sup>3</sup> on imported auto parts “characterized as complete motor vehicles” based on specified criteria and prescribe administrative procedures associated with the imposition of that charge.
- **Product at issue:** Imported auto parts (including CKD (completely knocked down) and SKD (semi-knocked down) kits).

## 2. SUMMARY OF KEY PANEL/AB FINDINGS

- **“Ordinary customs duty” vs “internal charge”:** As a preliminary “threshold” issue, the Appellate Body upheld the Panel's characterization of the charge as an “internal charge” (Art. III:2), rather than as an “ordinary customs duty” (first sentence, Art. II:1(b)), because, after considering the characteristics of the measure, the Panel had properly ascribed legal significance to, *inter alia*, the fact, that the obligation to pay the charge accrues *internally*, after auto parts enter China.
- **GATT Arts. III:2 (national treatment – taxes and charges) and III:4 (national treatment – domestic laws and regulations):** The Appellate Body upheld the Panel's findings that the measures violated: (i) Arts. III:2 because they imposed an internal charge on imported auto parts that was not imposed on like domestic auto parts; and (ii) Art. III:4 because they accorded imported parts less favourable treatment than like domestic auto parts by, *inter alia*, subjecting only imported parts to additional administrative procedures.
- **GATT Arts. II:1(a) and (b) (schedules of concessions – ordinary customs duty):** Alternatively, the Panel found that, even if the “charge” were an ordinary customs duty, it was still inconsistent with Art. II:1(a) and (b) because it corresponded to the tariff rate for motor vehicles (25 per cent), in excess of the applicable tariff rate for auto parts (10 per cent) under China's Schedule. The Panel rejected China's argument that a rule under the HS would allow auto parts imported in “multiple shipments”, which are subsequently assembled into a complete vehicle, to be classified as complete motor vehicles. The Appellate Body found it unnecessary to review these alternative findings given that, the Panel had made them, *inter alia*, on the assumption that it had erred in its resolution of the threshold issue, which the Appellate Body held it had not.
- **GATT Art. II:1(b) (schedules of concessions – CKD and SKD kits):** The Panel rejected the complainants' claim that China violated Art. II:1(b) by classifying CKD and SKD kits as motor vehicles because the term “motor vehicles” in China's Schedule could be interpreted to include CKD and SKD kits.
- **GATT Arts. XX(d) (exceptions – necessary to secure compliance with laws):** The Panel rejected China's defence of its measures under Art. XX(d) because China had not proven that the measures were “necessary to secure compliance” with its Schedule.
- **Para. 93 of China's Accession Working Party Report:** The Appellate Body reversed the Panel's finding that the measures were inconsistent with China's commitment not to apply a tariff rate exceeding 10 per cent if it created separate tariff lines for CKD and SKD kits. The Appellate Body held that the Panel had erred in construing the measures as imposing an ordinary customs duty, when in the Panel's earlier analysis of the complainants' claims with respect to GATT Art. III, it treated the charge as an internal charge.<sup>4</sup>

<sup>1</sup> China – Measures Affecting Imports of Automobile Parts

<sup>2</sup> Policy Order 8, Decree 125 and Announcement 4.

<sup>3</sup> The amount of the charge is equivalent to the average tariff rate applicable to complete motor vehicles under China's Schedule and is higher than the average 10% tariff rate applicable to auto parts.

<sup>4</sup> In the light of these findings, the Appellate Body did not find it necessary to rule on China's other preliminary claim that the United States and Canada had not made out a *prima facie* case of inconsistency; nor on the substance of China's appeal of the Panel's findings under para. 93.