

EC – IT PRODUCTS¹

(DS375, 376, 377)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	United States, Japan, Chinese Taipei	GATT Arts. II:1(a), II:1(b), X:1 and X:2	Establishment of Panel	23 September 2008
			Circulation of Panel Report	16 August 2010
Respondent	European Communities		Circulation of AB Report	NA
			Adoption	21 September 2010

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Various EC measures pertaining to the tariff classification, and consequent tariff treatment, of certain information technology products ("IT products").
- **Product at issue:** Flat panel display devices ("FDPs"), including those with digital DVI connectors that are capable of connecting to computers and other equipment; set-top boxes which have a communication function ("STBCs"), including those that access the Internet and have recording capabilities; and multifunctional digital machines ("MFMs"), capable of printing, scanning, copying and/or faxing.

2. SUMMARY OF KEY PANEL FINDINGS²

- **The Ministerial Declaration on Trade in Information Technology Products ("ITA"):** The European Communities had committed in its WTO Schedule to provide duty-free treatment to certain IT products pursuant to the ITA. The products receiving duty-free treatment were indicated in the ITA in two ways: as HS1996 headings and in "narrative description" form.
- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions – FDPs):** The Panel found that the measures at issue were inconsistent with Arts. II:1(a) and II:1(b) because they required EC member States to classify some FDPs under dutiable headings although such products fell within the scope of the "narrative description" and/or within the scope of the CN code 8471 60 90 (which pertains to "input or output units" of "automatic data-processing machines" (ADP)), both of which were duty-free in the EC Schedule pursuant to the European Communities' implementation of the ITA.³
- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions – STBCs):** The Panel found that the measures at issue were inconsistent with Arts. II:1(a) and II:1(b) because they required EC member States to classify under dutiable headings some STBCs although such products fell within the scope of the duty-free commitment in the "narrative description" included in the EC Schedule pursuant to the European Communities' implementation of the ITA.⁴
- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions – MFMs):** The Panel found that the measures at issue were inconsistent with Arts. II:1(a) and II:1(b) because they required EC member States to classify under dutiable headings certain MFMs that work with ADP machines and certain MFMs that do not work with ADP machines, although such products fell, respectively, within HS1996 subheadings 8471 60 (for "input or output units" of ADP machines) and 8517 21 (for "facsimiles"), both of which are duty-free in the EC Schedule pursuant to the European Communities' implementation of the ITA. The Panel found that the type of technology MFMs use to make "copies" is not "photocopying" and, as such, the products could never fall within the dutiable heading under which the European Communities was classifying these products (HS1996 subheadings 9009 12).
- **GATT Art. X (publication and administration of trade regulations):** The Panel found that the European Communities failed to publish promptly the explanatory notes related to the classification of certain STBCs, so as to enable governments and traders to become acquainted with them, inconsistently with Art. X:1. The Panel also found that the European Communities had acted inconsistently with Art. X:2 by enforcing the explanatory notes before its official publication.

¹ *European Communities and its member States – Tariff Treatment of Certain Information Technology Products*

² Other issues addressed: co-complainants as third parties; acceptance of requests to be a third party after the panel composition; status of EC member States as respondents.

³ However, the Panel found that the measures were not inconsistent with Art. II:1(b) in light of a duty suspension in place for certain LCD display devices. However, for those products falling within the scope of the two concessions that are not covered by the duty suspension, the Panel found that the duty suspension did not eliminate the inconsistency with Art. II:1(b) and, therefore, this dutiable treatment that was extended to those products was considered inconsistent with Art. II:1(b).

⁴ In particular, this includes set top boxes incorporating a device performing a recording or reproducing function but retaining the essential character of a set top box, and set top boxes utilizing ISDN, WLAN or Ethernet technology. The Panel found that the United States did not establish a prima facie case for its claim that the products at issue fell within the scope of concessions pursuant to certain tariff lines (8517 50 90, 8517 80 90, 8525 20 99 and 8528 12 91) listed in the EC Schedule.