EC – COMPUTER EQUIPMENT¹
(DS62, 67, 68)

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1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The European Communities’ application of tariffs on local area networks ("LAN") equipment and multimedia personal computers ("PCs") in excess of those provided for in the EC Schedules through changes in customs classification.

- **Product at issue:** Computer equipment associated with LAN namely, (i) LAN equipment such as network or adaptor cards and (ii) multimedia PCs.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. II:1 (schedule of concessions – LAN):** The Appellate Body reversed the Panel’s finding of a violation by the European Communities of Art. II:1 with respect to LAN equipment on the basis of the Panel’s erroneous legal reasoning and consideration of only selective evidence. In this regard the Appellate Body rejected the Panel’s finding that a tariff concession in the Schedule can be interpreted in light of an exporting Member’s “legitimate expectations” – a concept relevant to a non-violation complainant under GATT Art. XXIII:1(b) – in the context of a violation complaint. Rather, the Appellate Body found that a tariff concession provided for in the Member’s Schedule should be interpreted according to the general rules of treaty interpretation set out in Arts. 31 and 32 of the VCLT; Moreover, the Appellate Body said that the Panel should have further examined the following: the Harmonized System and its Explanatory Notes as context in interpretation of the terms of the Schedule; the existence and relevance of subsequent practice; the European Communities’ classification practice during the Tokyo Round, in addition to that during the Uruguay Round; relevant US practice with regard to the classification of the product at issue; and the EC legislation governing customs classification at the time.

- **Clarification of the scope of tariff concessions:** The Appellate Body reversed the Panel’s finding that the United States, as an exporting Member, was not required to clarify the scope of the European Communities’ tariff concessions. The Appellate Body emphasized the “give and take” nature of tariff negotiations and that Members’ Schedules “represent a common agreement among all Members”, particularly in light of the fact that they are an integral part of the GATT, and thus found that clarification is a “task for all interested parties”.

- **GATT Art. II:1 (schedule of concessions – PCs):** The Panel found that the United States failed to provide sufficient evidence to demonstrate that the European Communities had violated GATT Art. II:1 with respect to PCs.

3. OTHER ISSUES³

- **VCLT Art. 32 (supplementary means of interpretation):** The Appellate Body explained that the European Communities’ classification practice during the Uruguay Round constituted “supplementary means of interpretation” under VCLT Art. 32. According to the Appellate Body, the value of this evidence as a supplementary means of interpretation was subject to certain qualifications. For example, the Panel should have also considered as relevant the US practice with regard to the classification of this equipment, given that the common intention of the parties was at issue. Similarly, the Panel should have examined the EC legislation governing customs classification at the time, namely the EC “General Rules for the Interpretation of the Combined Nomenclature”.

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¹ European Communities – Customs Classification of Certain Computer Equipment
² The Appellate Body explained that the purpose of treaty interpretation under VCLT Art. 31 is “to ascertain the common intentions of the parties”.
³ Other issues addressed: measure and products covered (DSU Art. 6.2); scope of the defending parties.