CHILE – ALCOHOLIC BEVERAGES[1]
(DS87, 110)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*GATT Art. III:2*	Establishment of Panel	*25 March 1998 (DS110)* *18 November 1998 (DS87)*
			Circulation of Panel Report	*15 June 1999*
Respondent	*Chile*		Circulation of AB Report	*13 December 1999*
			Adoption	*12 January 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Chile's tax measures that imposed an excise tax at different rates – depending on the type of product (pisco, whisky, etc.) under the "Transitional System" and according to the degree of alcohol content (35°, 36°, ... 39°) under the "New Chilean System".

- **Product at issue:** All distilled spirits falling within HS heading 2208, including pisco (Chile's domestic product) and imported distilled spirits such as whisky, vodka, rum, gin, etc.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **GATT Art. III:2 (national treatment – taxes and charges), second sentence (directly competitive or substitutable products):** The Appellate Body upheld the Panel's finding that Chile's new tax regime for alcoholic beverages violated the national treatment principle under Art. III:2, second sentence. (Chile's appeal was only in regard to the new regime.) The Panel found both Chile's transitional and new tax regimes inconsistent with Art. III:2, second sentence.

  ("not similarly taxed"): The Appellate Body agreed with the Panel that imported distilled spirits and Chilean pisco, as directly competitive and substitutable products, were not similarly taxed since the tax burden (47 per cent) on most of imported products (95 per cent of imports) would be heavier than the tax burden (27 per cent) on most of the domestic products (75 per cent of domestic production). The Appellate Body took the view that the relevant comparison between imported and domestic products had to be made based on a comparison of the taxation on *all* imported and domestic products over the *entire* range of categories, not simply a comparison of the products within each category.

  ("applied so as to afford protection"): The Appellate Body stated that an examination of the design, architecture and structure of the New Chilean System "tend[ed] to reveal" that the application of dissimilar taxation of directly competitive or substitutable products would "afford protection to domestic production", as the magnitude of difference (20 per cent) between the tax rates – 27 per cent *ad valorem* for alcohol content of 35° or less (75 per cent of domestic production) and 47 per cent *ad valorem* for alcohol content of over 39° (95 per cent of imports) – was considerable. Also, the Appellate Body stated that a measure's purpose, objectively manifested in the design, architecture and structure of the measure, was pertinent to the task of evaluating whether that measure was applied so as to afford protection to domestic production. However, the Appellate Body rejected the Panel's consideration of the relationship (logical connection) between Chile's new measure and *de jure* discrimination (against imports) found under its traditional system. In this regard, it further said that "Members of the WTO should not be assumed, in any way, to have continued previous protection or discrimination through the adoption of a new measure, as this would come close to a 'presumption of bad faith'".

1 *Chile – Taxes on Alcoholic Beverages*
2 Other issues addressed: claim on the panel's failure to provide the "basic rationale" behind its findings (DSU Art. 12.7); DSU Arts. 3.2 and 19.2.