

INDIA – ADDITIONAL IMPORT DUTIES¹

(DS360)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	GATT Arts. II:1(b), II:2(a)	Establishment of Panel	June 20 2007
			Circulation of Panel Report	June 9 2008
Respondent	India		Circulation of AB Report	October 30 2008
			Adoption	November 17 2008

1. MEASURES AND PRODUCTS AT ISSUE

- Measures at issue: Two border charges, consisting of the "Additional Duty" imposed by India on imports of alcoholic beverages (beer, wine, and distilled spirits); and the "Extra-Additional Duty" imposed by India on imports of a wider range of products, including certain agricultural and industrial products, as well as alcoholic beverages.
- Products at issue: Alcoholic beverages (beer, wine, and distilled spirits) and other products, including certain agricultural and industrial products.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- GATT Art. II:1(b), II:2(a): The Appellate Body reversed the Panel's finding that the United States had failed to establish that the Additional Duty and the Extra-Additional Duty were inconsistent with Art. II:1(a) and II:1(b). The Appellate Body explained that it did not see a textual or other basis for the Panel's conclusion that "inherent discrimination" is a relevant or necessary feature of charges covered by Art. II:1(b). The Appellate Body further found that the Panel erred in its interpretation of the two elements of Art. II:2(a), that is "equivalence" and "consistency with Art. III:2". In particular, the Appellate Body disagreed with the Panel's conclusion that the term "equivalent" does not require any quantitative comparison of the charge and internal tax. Instead, the Appellate Body considered that the term "equivalent" calls for a comparative assessment that is both qualitative and quantitative in nature. Moreover, the Appellate Body clarified that the element of "consistency with Art. III:2" must be read together with, and imparts meaning to, the requirement that a charge and a tax be "equivalent".
- The Appellate Body considered that the Additional Duty and Extra-Additional Duty would be inconsistent with Art. II:1(b) to the extent that they result in the imposition of duties in excess of those set forth in India's Schedule of Concessions.

3. OTHER ISSUES²

- Burden of proof: The Appellate Body found that, in the circumstances of this dispute, where the potential for application of Art. II:2(a) was clear from the face of the challenged measures, the United States was required to present arguments and evidence that the Additional Duty and the Extra-Additional Duty were not justified under Art. II:2(a). The Appellate Body added that India, in asserting that the challenged measures were justified under Art. II:2(a), was required to adduce arguments and evidence in support of its assertion.

¹ India – Additional and Extra-Additional Duties on Imports from the United States

² Other issues addressed: DSU Art. 11(scope of complainant's challenge; objective assessment); DSU Art. 19 (concluding remarks).