

CANADA – AUTOS¹

(DS139, 142)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	Japan, European Communities	ASCM Arts. 1, 3 and 4.7	Establishment of Panel	1 February 1999
		GATS Arts. I and II	Circulation of Panel Report	11 February 2000
Respondent	Canada		GATT Arts. I and III	Circulation of AB Report
			Adoption	19 June 2000

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Canada's import duty exemption for imports by certain manufacturers, in conjunction with the Canadian Value Added ("CVA") requirements and the production to sales ratio requirements.
- Product at issue: Motor vehicle imports and imported motor vehicle parts and materials.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- GATT Art. I (MFN treatment): The Appellate Body upheld the Panel's finding that the duty exemption was inconsistent with the most-favoured-nation treatment obligation under Art. I:1 on the ground that Art. I:1 covers not only *de jure* but also *de facto* discrimination and that the duty exemption at issue in reality was given only to the imports from a small number of countries in which an exporter was affiliated with eligible Canadian manufacturers/importers. The Panel rejected Canada's defence that Art. XXIV allows the duty exemption for NAFTA members (Mexico and the United States), because it found that the exemption was provided to countries other than the United States and Mexico and because the exemption did not apply to all manufacturers from these countries.
- GATT Art. III:4 (national treatment): The Panel found that the CVA requirements forcing the use of domestic materials to be eligible for tax exemption resulted in "less favourable treatment" to imports under Art. III:4 by adversely affecting the conditions of competition for imports.
- ASCM Art. 3.1 (prohibited subsidy): (3.1(a): export subsidy) The Appellate Body upheld the Panel's finding that the duty exemption in conjunction with the ratio requirements was a prohibited "subsidy" contingent "in law" upon export performance within the meaning of Art. 3.1(a), because the amount of the duty exemption earned by a domestic manufacturer was directly dependent upon the amount exported. The Panel recommended under Art. 4.7 that Canada withdraw the subsidy within 90 days. (3.1(b): domestic product use subsidy) The Appellate Body, reversing the Panel, found that Art. 3.1(b) extends to subsidies that are contingent "*in fact*" upon the use of domestic over imported goods. It could not complete the Panel's analysis due to the insufficient factual basis.
- GATS Art. I:1 and II:1 (MFN): The Appellate Body, reversing the Panel, found that (i) determination of whether a measure is covered by the GATS must be made before the assessment of that measure's consistency with any substantive obligation of the GATS; (ii) the Panel failed to examine whether the measure affected trade in services within the meaning of Art. I:1; and (iii) the Panel failed to assess properly the relevant facts and to interpret Art. II:1. Thus, the Panel's conclusion that the measure was inconsistent with Art. II:1 was reversed.

3. OTHER ISSUES²

- Judicial economy: While upholding the Panel's exercise of judicial economy in respect of the European Communities' claim under ASCM Art. 3.1(a), the Appellate Body added a cautionary remark that "for purposes of transparency and fairness to the parties, a panel should, however, in all cases, address expressly those claims which it declines to examine and rule upon for reasons of judicial economy".

¹ Canada – Certain Measures Affecting the Automotive Industry

² Other issues addressed in this case: judicial economy; interpretation of "requirement" under GATT Art. III:4 (panel); deadline for elaboration of claims; order of consideration of parties' claims; and Panel's discussion of the measure under GATS Arts. V and XVII.