

CHINA – AUTO PARTS¹

(DS339, 340, 342)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	United States, European Communities, and Canada	GATT 1994, Arts. II, III:2, III:4, XX(d)	Establishment of Panel	26 October 2006
			Circulation of Panel Report	18 July 2008
Respondent	China	China's Accession Working Party Report	Circulation of AB Report	15 December 2008
			Adoption	12 January 2009

1. MEASURE AND PRODUCT AT ISSUE

- Measures at issue: Three legal instruments enacted by China² which impose a 25% "charge"³ on imported auto parts "characterized as complete motor vehicles" based on specified criteria and prescribe administrative procedures associated with the imposition of that charge.
- Product at issue: Imported auto parts (including CKD (completely knocked down) and SKD (semi-knocked down) kits).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- GATT Articles II and III: As a preliminary "threshold" issue, the Appellate Body upheld the Panel's characterization of the charge as an "internal charge" (Article III:2), rather than as an "ordinary customs duty" (first sentence, Article II:1(b)), because, after considering the characteristics of the measure, the Panel had properly ascribed legal significance to, *inter alia*, the fact, that the obligation to pay the charge accrues *internally*, after auto parts enter China. The Appellate Body rejected China's argument that the Harmonized System (HS) serves as relevant context for determining this threshold issue.
- GATT Articles III:2 and III:4: The Appellate Body upheld the Panel's findings that the measures violated: (i) Article III:2 because they imposed an internal charge on imported auto parts that is not imposed on like domestic auto parts; and (ii) Article III:4 because they accorded imported parts less favourable treatment than like domestic auto parts by, *inter alia*, subjecting only imported parts to additional administrative procedures.
- GATT Article II:1(a) and (b): Alternatively, the Panel found that, even if the "charge" were an ordinary customs duty, it was still inconsistent with Article II:1(a) and (b) because it corresponded to the tariff rate for motor vehicles (25%), in excess of the applicable tariff rate for auto parts (10%) under China's Schedule. The Panel rejected China's argument that a rule under the HS would allow auto parts imported in "multiple shipments", which are subsequently assembled into a complete vehicle, to be classified as complete motor vehicles. The Appellate Body found it unnecessary to review these alternative findings given that, the Panel had made them, *inter alia*, on the assumption that it had erred in its resolution of the threshold issue, which the Appellate Body held it had not.
- GATT Article II:1(b) (CKD and SKD kits): The Panel rejected the complainants' claim that China violated Article II:1(b) by classifying CKD and SKD kits as motor vehicles because the term "motor vehicles" in China's Schedule could be interpreted to include CKD and SKD kits.
- GATT Article XX(d): The Panel rejected China's defence of its measures under Article XX(d) because China had not proven that the measures were "necessary to secure compliance" with its Schedule.
- Paragraph 93 of China's Accession Working Party Report: The Appellate Body reversed the Panel's finding that the measures were inconsistent with China's commitment not to apply a tariff rate exceeding 10% if it created separate tariff lines for CKD and SKD kits. The Appellate Body held that the Panel had erred in construing the measures as imposing an ordinary customs duty, when in the Panel's earlier analysis of the complainants' claims with respect to Article III of the GATT, it treated the charge as an internal charge.⁴

¹ China – Measures Affecting Imports of Automobile Parts.

² Policy Order 8, Decree 125 and Announcement 4.

³ The amount of the charge is equivalent to the average tariff rate applicable to complete motor vehicles under China's Schedule and is higher than the average 10% tariff rate applicable to auto parts.

⁴ In the light of these findings, the Appellate Body did not find it necessary to rule on China's other preliminary claim that the United States and Canada had not made out a *prima facie* case of inconsistency; nor on the substance of China's appeal of the Panel's findings under paragraph 93.