

XII. Findings and Conclusions

231. For the reasons set out in this Report, the Appellate Body:

- (a) rejects the United States' claim that the Panel limited the scope of the United States' challenge to the Additional Duty as imposed only through Customs Notification 32/2003, and the Extra-Additional Duty as imposed only through Customs Notification 19/2006;
- (b) as regards the Panel's findings with respect to the interpretation of Articles II:1(b) and II:2(a):
 - (i) finds that the Panel erred in its interpretation that Article II:1(b) covers only duties or charges that "inherently discriminate against imports";
 - (ii) finds that the Panel erred in interpreting the term "equivalent" in Article II:2(a) as requiring only a qualitative comparison of the relative function of a charge and internal tax, thereby incorrectly excluding quantitative considerations relating to their effect and amount;
 - (iii) finds that the Panel erred in finding that "consistency with Article III:2" is not a necessary condition in the application of Article II:2(a); and, consequently
 - (iv) reverses the Panel's findings, in paragraphs 7.299, 7.394, 7.401, and 8.1 of the Panel Report, that the United States failed to establish that the Additional Duty and the Extra-Additional Duty are inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994;
- (c) finds, in the circumstances of this case, that the United States was required to present arguments and evidence that the Additional Duty and the Extra-Additional Duty are not justified under Article II:2(a), and that India, in asserting that those duties are justified, was required to adduce arguments and evidence in support of its assertion;
- (d) declines to make an additional finding on the United States' claim under Article 11 of the DSU;
- (e) considers that the Additional Duty would not be justified under Article II:2(a) of the GATT 1994 insofar as it results in the imposition of charges on imports of alcoholic beverages in excess of the excise duties applied on like domestic products; and, consequently, that this would render the Additional Duty inconsistent with

Article II:1(b) to the extent that it results in the imposition of duties in excess of those set forth in India's Schedule of Concessions;

- (f) considers that the Extra-Additional Duty would not be justified under Article II:2(a) of the GATT 1994 insofar as it results in the imposition of charges on imports in excess of the sales taxes, value-added taxes, and other local taxes or charges that India alleges are equivalent to the Extra-Additional Duty; and, consequently, that this would render the Extra-Additional Duty inconsistent with Article II:1(b) to the extent that it results in the imposition of duties in excess of those set forth in India's Schedule of Concessions; and
- (g) finds that the Panel did not act contrary to Articles 3.2, 11, and 19 of the DSU in providing "concluding remarks" in paragraph 8.2 of the Panel Report.

232. Having reversed the Panel's findings in paragraph 8.1 of the Panel Report, and in view of its findings and conclusions above, the Appellate Body makes no recommendation, in this case, to the Dispute Settlement Body pursuant to Article 19.1 of the DSU.

Signed in the original in Geneva this 10th day of October 2008 by:

Jennifer Hillman
Presiding Member

Giorgio Sacerdoti
Member

Yuejiao Zhang
Member