

INDIA – MEASURES AFFECTING THE AUTOMOTIVE SECTOR

AB-2002-1

Report of the Appellate Body

WORLD TRADE ORGANIZATION
APPELLATE BODY

India – Measures Affecting the Automotive Sector

India – *Appellant*
European Communities – *Appellee*
United States – *Appellee*

Korea – *Third Participant*

AB-2002-1

Present:

Ganesan, Presiding Member
Sacerdoti, Member
Taniguchi, Member

1. This appeal concerns the Panel Report, *India – Measures Affecting the Automotive Sector* (the "Panel Report").¹ The Panel was established to consider complaints by the United States and the European Communities relating to certain aspects of India's automotive components licensing policy as set forth in India's Public Notice No. 60² and the Memoranda of Understanding signed pursuant thereto. Public Notice No. 60 required each passenger car manufacturer in India to sign a Memorandum of Understanding ("MOU") with the Director General of Foreign Trade, and specified a number of conditions to be included in such MOUs.³

2. This dispute concerns two of the conditions stipulated by Public Notice No. 60 and included in each MOU, namely: (i) an "indigenization" requirement, whereby each car manufacturer was obliged to achieve indigenization, or local content, of a minimum level of 50 percent by the third year from the date of its first import of cars in the form of completely and semi-knocked down kits ("CKD/SKD kits"), or certain automobile components, and 70 percent by the fifth year from that date; and (ii) a "trade balancing requirement", whereby each car manufacturer was obliged to balance, over the period of the MOU, the value of its imports of CKD/SKD kits and components with the value of its exports of cars and components.⁴ At the time Public Notice No. 60 was issued, India maintained import restrictions and a discretionary import licensing scheme for, *inter alia*, automobile CKD/SKD kits and components. A manufacturer that failed to comply with the conditions set forth in Public Notice No. 60 and the MOUs could be denied a licence to import CKD/SKD kits and components.

¹WT/DS146/R, WT/DS175/R, 21 December 2001.

²Public Notice No. 60 was issued on 12 December 1997 by the Government of India's Ministry of Commerce, acting pursuant to the Foreign Trade (Development and Regulation) Act of 1992. (Panel Report, para. 2.4)

³Panel Report, paras. 2.4 and 2.5 and Annex Tables 1 and 2.

⁴*Ibid.*

India abolished its import restrictions and related discretionary import licensing scheme, including the restrictions and licensing requirements applicable to CKD/SKD kits and components, on 1 April 2001. This occurred during the course of the Panel proceedings. The relevant factual aspects of this dispute are set out in greater detail in paragraphs 2.1 through 2.5 of the Panel Report.

3. On 15 May 2000, the United States requested the establishment of a panel to examine the consistency of the measures at issue with Articles III:4 and XI:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), and Articles 2.1 and 2.2 of the *Agreement on Trade-Related Investment Measures* (the "TRIMS Agreement").⁵ On 12 October 2000, the European Communities requested the establishment of a panel to examine the consistency of the measures at issue with Articles III:4 and XI:1 of the GATT 1994, and Article 2.1 of the *TRIMS Agreement*.⁶ The European Communities also specifically requested the Panel to find that the measures at issue were inconsistent with these provisions of the covered agreements as of the date of establishment of the Panel, and that they had remained so after 1 April 2001.⁷ Pursuant to Article 10.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Korea and Japan reserved their third party rights in the dispute.⁸

4. In its Report, circulated on 21 December 2001, the Panel found that:

- (a) India acted inconsistently with its obligations under Article III:4 of the GATT 1994 by imposing on automotive manufacturers, under the terms of Public Notice No. 60 and the MOUs signed thereunder, an obligation to use a certain proportion of local parts and components in the manufacture of cars and automotive vehicles ("indigenization" condition);
- (b) India acted inconsistently with its obligations under Article XI of the GATT 1994 by imposing on automotive manufacturers, under the terms of Public Notice No. 60 and the MOUs signed thereunder, an obligation to balance any importation of certain kits and components with exports of equivalent value ("trade balancing" condition); [and]

⁵WT/DS175/4.

⁶WT/DS146/4. At its meeting on 17 November 2000, the Dispute Settlement Body agreed, in accordance with Article 9.1 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, that the Panel established on 27 July 2000 to examine the complaint by the United States should also examine the complaint by the European Communities. (Panel Report, para. 1.4; WT/DSB/M/92)

⁷Panel Report, para. 3.5.

⁸*Ibid.*, para. 1.6.

- (c) India acted inconsistently with its obligations under Article III:4 of the GATT 1994 by imposing, in the context of the trade balancing condition under the terms of Public Notice No. 60 and the MOUs signed thereunder, an obligation to offset the amount of any purchases of previously imported restricted kits and components on the Indian market, by exports of equivalent value.⁹

5. In the light of its findings that the measures at issue were inconsistent with Articles III:4 and XI:1 of the GATT 1994, the Panel was of the view that it was not necessary to address the claims made by the European Communities and the United States under the *TRIMS Agreement*.¹⁰

6. The Panel then went on to give "separate consideration" to:

... whether the events which took place subsequently, including on or after 1 April 2001, might have affected the existence of any violations identified and ... whether those events affect the nature or range of any recommendations [the Panel] may make to the DSB in accordance with Article 19.1 of the DSU.¹¹

7. More specifically, the Panel:

... felt that it would not be making an "objective assessment of the matter before it", or assisting the DSB in discharging its responsibilities under the DSU in accordance with Article 11 of the DSU, had it chosen not to address the impact of events having taken place in the course of the proceedings, in assessing the appropriateness of making a recommendation under Article 19.1 of the DSU.¹²

8. Having considered the events that took place during the Panel proceedings, the Panel found that:

... the indigenization conditions contained in Public Notice No. 60 and in the MOUs, as they have continued to exist and apply after 1 April 2001, have remained in violation of the relevant GATT provisions.¹³

...

⁹Panel Report, para. 8.1.

¹⁰*Ibid.*, para. 7.324.

¹¹*Ibid.*, para. 8.3.

¹²*Ibid.*, para. 8.28.

¹³*Ibid.*, para. 8.47.

... the trade balancing conditions contained in Public Notice No. 60 and in the MOUs, as they have continued to exist and apply after 1 April 2001, have remained in violation of the relevant GATT provisions.¹⁴

9. The Panel consequently recommended that the Dispute Settlement Body (the "DSB") request India to bring its measures into conformity with its obligations under the *Marrakesh Agreement Establishing the World Trade Organization* (the "WTO Agreement").¹⁵

10. On 31 January 2002, India notified the DSB of its decision to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel, pursuant to paragraph 4 of Article 16 of the DSU, and filed a Notice of Appeal with the Appellate Body pursuant to Rule 20 of the *Working Procedures for Appellate Review* (the "*Working Procedures*"). In this Notice of Appeal, India stated that:

India seeks review by the Appellate Body of the Panel's conclusion that Articles 11 and 19.1 of the DSU required it to address the question of whether the measures found [to] be inconsistent with Articles III:4 and XI:1 of the General Agreement on Tariffs and Trade 1994 ("GATT") had been brought into conformity with the GATT as a result of measures taken by India during the course of the proceedings.

India further seeks review by the Appellate Body of the Panel's conclusion that the enforcement of the export obligations that automobile manufacturers incurred until 1 April 2001 under India's former import licensing scheme is inconsistent with Articles III:4 and XI:1 of the GATT.

India considers these conclusions of the Panel to be in error and based upon erroneous findings on issues of law and related legal interpretations.¹⁶

11. On 11 February 2002, India filed an appellant's submission.¹⁷ The European Communities and the United States each filed an appellee's submission on 25 February 2002.¹⁸ On the same day, Korea filed a third participant's submission.¹⁹

¹⁴Panel Report, para. 8.61.

¹⁵*Ibid.*, para. 8.65.

¹⁶WT/DS146/8, WT/DS175/8, 31 January 2002.

¹⁷Pursuant to Rule 21(1) of the *Working Procedures*.

¹⁸Pursuant to Rule 22(1) of the *Working Procedures*.

¹⁹Pursuant to Rule 24 of the *Working Procedures*.

12. On 25 February 2002, the Appellate Body received a letter from Japan indicating that Japan would not be filing a written submission in this appeal, but that Japan wished to attend the oral hearing.²⁰ By letter dated 27 February 2002, the Appellate Body Secretariat informed Japan, the participants and the third participant that the Division hearing this appeal was "inclined to allow Japan to attend the oral hearing as a passive observer, if none of the participants or third participants object." On 1 March 2002 and 4 March 2002, respectively, the Appellate Body received written responses from the European Communities and the United States.

13. Taking account of the views expressed by the European Communities and the United States, the Division on 5 March 2002 informed Japan, the participants, and the third participant, that although Japan had not filed a written submission as a third participant, Japan would be allowed to attend the oral hearing as a passive observer, that is, to attend the oral hearing and hear the oral statements and responses to questioning by the participants and the third participant in this appeal.

14. In accordance with the Working Schedule for Appeal communicated to the parties and the third parties on 1 February 2002, the oral hearing in the appeal was scheduled to be held on 15 March 2002.²¹

15. On 14 March 2002, the Appellate Body received a letter from India, in which India stated that:

Pursuant to Rule 30(1) of the *Working Procedures for Appellate Review*, this is to inform the Appellate Body that India is withdrawing the above-mentioned appeal; oral hearing on this is scheduled for 15 March 2002. Inconvenience caused to the Appellate Body, Secretariat, the other parties and the third participants is deeply regretted.

16. Rule 30(1) of the *Working Procedures* provides that:

At any time during an appeal, the appellant may withdraw its appeal by notifying the Appellate Body, which shall forthwith notify the DSB.

17. Upon receipt of India's letter of 14 March 2002, the Appellate Body on the same day notified the DSB, pursuant to Rule 30(1) of the *Working Procedures*, that India "has notified the Appellate Body that India is withdrawing its appeal" in this dispute²², and simultaneously informed India, the

²⁰ Japan had reserved its rights to participate as a third party in the proceedings before the Panel; Panel Report, para. 1.6.

²¹ Pursuant to Rule 27 of the *Working Procedures*.

²² WT/DS146/9, WT/DS175/9, 14 March 2002.

European Communities, the United States, Korea and Japan that the oral hearing in this appeal was cancelled.

18. In view of India's withdrawal of the appeal by its letter of 14 March 2002, the Appellate Body hereby completes its work in this appeal.

Signed in the original at Geneva this 15th day of March 2002 by:

A.V. Ganesan
Presiding Member

Giorgio Sacerdoti
Member

Yasuhei Taniguchi
Member