

VII. Findings and Conclusions in the Appellate Body Report WT/DS403/AB/R

261. In the appeal of the Panel Report, *Philippines – Taxes on Distilled Spirits* (complaint by the United States, WT/DS403/R) (the "US Panel Report"), for the reasons set out in this Report, the Appellate Body:

- (a) with respect to Article III:2, first sentence, of the GATT 1994:
 - (i) upholds the Panel's finding, in paragraph 7.85 of the US Panel Report, that each type of imported distilled spirit at issue in this dispute—gin, brandy, vodka, whisky, and tequila—made from non-designated raw materials is "like" the same type of domestic distilled spirit made from designated raw materials, within the meaning of Article III:2, first sentence, of the GATT 1994;
 - (ii) finds that the Panel did not act inconsistently with Article 11 of the DSU in its evaluations of the products' physical characteristics, of the Philippine market for distilled spirits, and of tariff classification;
 - (iii) upholds, as a consequence, the Panel's finding, in paragraphs 7.90 and 8.2(a) of the US Panel Report, that the Philippines has acted inconsistently with Article III:2, first sentence, of the GATT 1994 by imposing on each type of imported distilled spirit at issue in this dispute—gin, brandy, rum, vodka, whisky, and tequila—internal taxes in excess of those applied to "like" domestic distilled spirits of the same type made from designated raw materials; and
 - (iv) reverses the Panel's finding, in paragraph 7.77 of the US Panel Report, to the extent that it stands for the proposition that *all* distilled spirits at issue in this dispute are "like products", regardless of types, within the meaning of Article III:2, first sentence, of the GATT 1994;
- (b) with respect to Article III:2, second sentence, of the GATT 1994:
 - (i) upholds the Panel's finding, in paragraph 7.138 of the US Panel Report, that all imported distilled spirits made from non-designated raw materials and all domestic distilled spirits made from designated raw materials are "directly competitive or substitutable" within the meaning of Article III:2,

second sentence, of the GATT 1994, and finds that the Panel did not act inconsistently with Article 11 of the DSU in reaching this finding;

- (ii) upholds the Panel's finding, in paragraph 7.187 of the US Panel Report, that dissimilar taxation imposed by the Philippine excise tax on imported distilled spirits and on directly competitive or substitutable domestic spirits is applied "so as to afford protection" to Philippine production of distilled spirits; and
- (iii) upholds, as a consequence, the Panel's finding in paragraphs 7.188 and 8.2(b) of the US Panel Report, that the Philippines has acted inconsistently with Article III:2, second sentence, of the GATT 1994 by applying dissimilar internal taxation to all imported distilled spirits made from non-designated raw materials and to all directly competitive or substitutable domestic distilled spirits made from designated raw materials, so as to afford protection to Philippine production of distilled spirits.

262. The Appellate Body recommends that the DSB request the Philippines to bring its measures, found in this Report and in the US Panel Report, as modified by this Report, to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 7th day of December 2011 by:

Peter Van den Bossche
Presiding Member

Jennifer Hillman
Member

Ricardo Ramírez-Hernández
Member