The Screwdriver Case

In the Matter of the European Economic Community's Regulation of Imports of Parts and Components

General Agreement on Tariffs and Trade, Dispute Settlement Panel, 1990.
GATT, *Basic Instruments and Select Documents, Thirty-seventh Supplement*, p. ___ (1990); *International Legal Materials*, vol. 30, p. 1075 (1991).

In June 1987, the European Community added a provision to its antidumping regulations that was meant to prevent the circumvention of antidumping duties through the use of so-called "screwdriver plants." A screwdriver plant is a local subsidiary or affiliate that assembles parts or materials imported from its foreign parent to produce the same product as its parent. Because the product is locally manufactured, at least in part, it can escape some import duties and all antidumping duties.

The Community's anti-circumvention provision, Council Regulation No. 2438/88 stated that:

> *Definitive antidumping duties may be imposed . . . on products that are introduced into the commerce of the Community after having been assembled or produced in the Community, provided that:*
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> - *assembly or production is carried out by a party which is related or associated to any of the manufacturers whose exports of the like product are subject to a definitive antidumping duty,*
> - *the assembly or production operation was started or substantially increased after the opening of the antidumping investigation,*
> - *the value of parts or materials used in the assembly or production operation and originating in the country of exportation of the product subject to the antidumping duty exceeds the value of all other parts or materials by at least 50 percent.*

MAP 7–3 ▫ European Community (1990)

Between June 1987 when the provision was adopted and October 1988 when the GATT panel assigned to investigate the validity of the provision was appointed, the Community imposed antidumping duties in eight cases, all of which involved products assembled or produced in the EC by parties related to or associated with Japanese manufacturers whose exports of similar finished products were subject to antidumping duties in the Community.

Japan asked the GATT CONTRACTING PARTIES *to appoint a dispute settlement panel in July 1988, and it did so in October. Japan asked the panel to find that the European Community's anti-circumvention provision was inconsistent with the Community's obligations under Articles I, II, and III of the General Agreement. The Community argued that the policy underlying its actions was consistent with the objectives of the General Agreement.*

[*Article II(1)(b)*]

The Panel noted that the anti-circumvention duties are levied, according to Article 13(10)(a) [of the European Community's anti-circumvention provision], "on products that are introduced into the commerce of the Community after having been assembled or produced in the Community." The duties are thus imposed, as the EEC explained before the Panel, not on imported parts or materials but on the finished products assembled or produced in the EEC. They are not imposed conditional upon the importation of a product or at the time or point of importation. The EEC considers that the anti-circumvention duties should, nevertheless, be regarded as customs duties imposed "in connection with importation" within the meaning of Article II(1)(b). The main arguments the EEC advanced in support of this view were: firstly, that the purpose of these duties was to eliminate circumvention of antidumping duties on finished products and that their nature was identical to the nature of the antidumping duties they were intended to enforce; and secondly, that the duties were [a] collected by the customs authorities under procedures identical to those applied for the collection of customs duties, [b] formed part of the resources of the EEC in the same way as customs duties, and [c] related to parts and materials which were not considered to be "in free circulation" within the EEC.

In the light of the above facts and arguments, the Panel first examined whether the *policy or purpose of a charge* is relevant to determining the issue of whether the charge is imposed in "connection with importation" within the meaning of Article II(1)(b). The text of Article I, II, III and the [interpretive] note to Article III refers to charges "imposed on importation," "collected . . . at the time or point of importation" and applied "to an imported product and to the like domestic product." The relevant fact, according to the text of these provisions, is not the policy purpose attributed to the charge but rather whether the charge is due on importation or at the time or point of importation or whether it is collected internally. This reading of Articles II and III is supported by their drafting history and by previous panel reports.[15] A recent panel report which has examined the provisions of the General Agreement governing tax adjustments applied to goods entering into international trade (among them Articles II and III) stated that:

> *the tax* adjustment *rules of the General Agreement* distinguish between taxes on products and taxes not directly levied on products; they *do not distinguish between taxes with different policy purposes.*[16] (Emphasis added)

The Panel further noted that the policy purpose of charges is frequently difficult to determine objectively. Many charges could be regarded as serving both internal purposes and purposes related to the importation of goods. Only at the expense of creating substantial legal uncertainty could the policy purpose of a charge be considered to be relevant in determining whether the charge falls under Article II(1)(b) or Article III(2). The Panel therefore concluded that the policy purpose of the charge is not relevant to determining the issue of whether the charge is imposed "in connection with importation" within the meaning of Article II(1)(b).

The Panel proceeded to examine whether the mere *description or categorization of a charge under the domestic law* of a contracting party is relevant to determining the issue of whether it is subject to the requirements of Article II or those of Article III(2). The Panel noted that if the description or categorization of a charge under the domestic law of a contracting party were to provide the required "connection with importation," contracting parties could determine themselves which of these provisions would apply to their charges. They could, in particular, impose charges on products after their importation simply by assigning the collection of these charges to their customs administration and allocating the revenue generated to their customs revenue. With such an interpretation the basic objective underlying Articles II and III, namely that discrimination against products from other contracting parties should only take the form of ordinary customs duties imposed on or in connection with importation and not the form of internal taxes, could not be achieved. The same reasoning applies to the *description and categorization of the product subject to a charge*. The fact that the EEC treats imported parts and materials subject to anti-circumvention duties as not being "in free circulation" therefore cannot, in the view of the Panel, support the conclusion that the anti-circumvention duties are being levied "in connection with importation" within the meaning of Article II(1)(b).

In the light of the above, the Panel found that the anti-circumvention duties are not levied "on or in connection with importation" within the meaning of Article II(1)(b), and consequently do not constitute customs duties within the meaning of that provision.

Article III(2)

The Panel proceeded to examine the anti-circumvention duties in light of Article III(2), first sentence, according to which:

> the products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

The Panel noted that, in the case in which anti-circumvention duties had been applied, the EEC followed subparagraph (c) of

[15] *Basic Instruments and Select Documents, First Supplement*, p. 60 (1953); *Basic Instruments and Select Documents, Twenty-fifth Supplement*, p. 49 at p. 67 (1978).

[16] *Basic Instruments and Select Documents, Thirty-fourth Supplement*, p. 161 (1989).

the anti-circumvention provisions, according to which "the amount of duty collected shall be proportional to that resulting from the application of the rate of antidumping duty applicable to the exporter of the complete products on the CIF value of the parts or materials imported." The Panel further noted that like parts and materials of domestic origin are not subject to any corresponding charge. The Panel therefore found that the anti-circumvention duties on the finished products subject imported parts and materials indirectly to an internal charge in excess of that applied to like domestic products and that they are consequently contrary to Article III(2), first sentence.

The Panel concluded that the European Economic Communities' anti-circumvention duties on products assembled or produced within the Community by subsidiaries or affiliates of Japanese manufacturers of products subject to antidumping duties were inconsistent with Articles II(1) and III(2) of the General Agreement on Tariffs and Trade. The Panel recommended that the CONTRACTING PARTIES *request the European Economic Community to bring Article 13(10) of Council Regulations Nos. 2176/84 and 2423/88 into compliance with the Community's obligations under the General Agreement.*