

# JAPAN – ALCOHOLIC BEVERAGES II<sup>1</sup>

(DS8, 10, 11)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	Canada, European Communities, United States	GATT Art. III	Establishment of Panel	27 September 1995
			Circulation of Panel Report	11 July 1996
Respondent	Japan		Circulation of AB Report	4 October 1996
			Adoption	1 November 1996

## 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Japanese Liquor Tax Law that established a system of internal taxes applicable to all liquors at different tax rates depending on which category they fell within. The tax law at issue taxed shochu at a lower rate than the other products.
- **Product at issue:** Vodka and other alcoholic beverages such as liqueurs, gin, genever, rum, whisky and brandy, and domestic shochu.

## 2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. III:2 (national treatment – taxes and charges), first sentence (like products):** The Appellate Body upheld the Panel's finding that vodka was taxed in excess of shochu, in violation of Art. III:2, first sentence, accepting the Panel's interpretation that Art. III:2, first sentence requires an examination of the conformity of an internal tax measure by determining two elements: (i) whether the taxed imported and domestic products are like; and (ii) whether the taxes applied to the imported products are in excess of those applied to the like domestic products.
- **GATT Art. III:2 (national treatment – taxes and charge), second sentence (directly competitive or substitutable products):** The Appellate Body upheld the Panel's finding that shochu and whisky, brandy, rum, gin, genever, and liqueurs were not similarly taxed so as to afford protection to domestic production, in violation of Art. III:2, second sentence. Modifying some of the Panel's reasoning, the Appellate Body clarified three separate issues that must be addressed to determine whether a certain measure is inconsistent with Art. III:2, second sentence: (i) whether imported and domestic products are directly competitive or substitutable products; (ii) whether the directly competitive or substitutable imported and domestic products are not similarly taxed; and (iii) whether the dissimilar taxation of the directly competitive or substitutable imported and domestic products is applied so as to afford protection to domestic production.
- **GATT Art. III:1 (national treatment – general principles):** The Appellate Body agreed with the Panel that Art. III:1, as a provision containing general principles, informs the rest of Art. III, and further elaborated that, because of the textual differences in the two sentences, Art. III:1 informs the first and second sentences of Art. III:2 in different ways.

## 3. OTHER ISSUES<sup>2</sup>

- **Status of prior panel reports:** Although reversing the Panel's finding that adopted GATT and WTO panel reports constitute subsequent practice under VCLT Art. 31(3)(b), the Appellate Body found, however, that such reports create "legitimate expectations" that should be taken into account where they are relevant to a dispute.

<sup>1</sup> *Japan – Taxes on Alcoholic Beverages*

<sup>2</sup> Other issues addressed: treaty interpretation (VCLT); terms of reference.