

IN THE WORLD TRADE ORGANIZATION

**India — Tariff Treatment on Certain Goods in the Information and
Communications Technology Sector**

WT/DS582/DS588

India — Tariff Treatment on Certain Goods

WT/DS584

Third Party Submission

by

Norway

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Table of cases cited in this submission

<i>EC – IT Products</i>	Panel Reports, <i>European Communities and its member States – Tariff Treatment of Certain Information Technology Products</i> , WT/DS375/R / WT/DS376/R / WT/DS377/R, adopted 21 September 2010, DSR 2010:III, p. 933
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I. INTRODUCTION

1. Norway welcomes the opportunity to present its views as a third party in the disputes brought by the European Union, Japan and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (“TPKM”) concerning the consistency with Article II:1 of the General Agreement on Tariffs and Trade (the “GATT 1994”) of India’s applied customs on imports of certain products in the information and communications technology (“ICT”) sector. Norway holds both an economic and a systemic interest in this matter.

2. In this written submission, Norway will not address all of the issues upon which there is disagreement between the Parties to the dispute. Rather, Norway will confine itself to briefly discuss one of the issues raised: namely the product scope of the Information Technology Agreement (“ITA”).

II. THE PRODUCT SCOPE OF THE ITA

3. The ITA is comprised of three parts: 1) the Ministerial Declaration on Trade in Information Technology Products (“the Ministerial Declaration”); 2) the Annex to the Ministerial Declaration; and 3) Attachments A and B to that Annex.

4. Paragraph 2 of the Ministerial Declaration requires that each participant eliminate and bind customs duties at zero for all products specified in Attachments A and B to the Annex to the Ministerial Declaration. In Attachment A, items are listed in accordance with Harmonized System (HS) 1996 headings (four digits) and subheadings (six digits), with accompanying descriptions. Some of the subheadings listed are marked with “ex” to indicate that not all products falling within that category are included in the product scope. Transpositions of WTO Members’ schedules from HS 1996 to HS 2002, and subsequently to HS 2007 maintain the relevant concessions.

5. There is disagreement between the Parties to these disputes concerning which products are included in the commitments under the ITA. In its first written submission, India appears to argue that only the products that existed at 8-digit level in 1996 are a part of India’s commitments, whereas other products at 8-digit level under the same 6-digit product category

fall outside of India’s obligations under the ITA.¹ Our reading of India’s submission is that such tariff lines constitute “new” products.

6. In contrast, the complainants’ first written submissions indicate that their assumptions are that the entire product segment under the 6-digit tariff lines in India’s schedule is comprised in the commitments, i.e. irrespective of whether the products at 8-digit level existed in 1996.²

7. In Norway’s view, the obvious starting point here must be the commitments made in the schedules. Technological advancement within a product segment does not change that simple fact. In other words, it is crucial to distinguish between technological advancements leading to “new products” not captured by the tariff lines at six-digit level as listed in Attachment A (following transposition) and included in Members’ schedules on the one hand, and technological advancements which are developments of a product that falls within existing commitments on the other.

8. This is a basic and self-evident starting point when reading the WTO Agreements and interpreting how Members’ obligations were to be understood. By contrast, an interpretation which implies that a product segment could automatically be released from binding commitments upon technological advancement would seriously undermine the system.

9. Therefore, Norway strongly disagrees with India’s perceived assertion that including technological advancement within a product segment falling within the tariff line listed in Attachment A would involve expansion of “new” products. Rather, product expansion which requires further negotiations would in our view either involve expansions at 6-digit level, or inclusion of products originally excluded. In our view, this is supported by the panel in *EC – IT Products*, despite the fact that India apparently misconstrues that panel’s reasoning to support the opposite.³

¹ India’s first written submissions in DS582, DS584, DS588, Sections IV.

² European Union’s first written submission in DS582, Sections III.B-C.; Japan’s first written submission in DS584, Section III.B; TPKM’s first written submission in DS588, Sections 3 and 4.

³ Panel Report, *EC – IT Products*, paras. 7.388-7.389, and India’s first written submissions: in DS582, para. 121; in DS584, para. 104; in DS588, para. 122.

III. CONCLUSION

10. Norway respectfully requests the Panel to take account of the considerations set out above when evaluating the claims set forth in this dispute, and reserves the right to elaborate our arguments further in an oral statement.