

BEFORE THE WORLD TRADE ORGANIZATION

***EUROPEAN COMMUNITIES AND ITS MEMBER STATES –
TARIFF TREATMENT OF CERTAIN INFORMATION
TECHNOLOGY PRODUCTS***

(WT/DS375, WT/DS376, WT/DS377)

**JAPAN'S ANSWERS TO PANEL QUESTIONS
TO THE THIRD PARTIES FROM THE FIRST SUBSTANTIVE
MEETING**

3 JUNE 2009

1. (All Third parties) At least one party has stated that certain terms in the dispute should be given a "special meaning" pursuant to Article 31.4 of the *Vienna Convention on the Law of Treaties*. Could the Third Parties please elaborate further on the applicability of this provision in the present case? In particular:

- (a) What, if any, are the terms that may need to be given a "special meaning" within the meaning of Article 31.4 of the *Vienna Convention on the Law of Treaties*?
- (b) Could the Panel *sua sponte* apply this provision without any Party having expressly invoked it? The Panel in *Mexico - Telecoms* seemed to indicate that since the provision under interpretation was "technical" and from a "specialized service sector" it was "entitled" to examine what "special meaning" it may have in the telecommunications context (Panel Report, *Mexico - Telecoms* paragraph. 7.108). Do you agree?
- (c) If a party provides the "technological meaning/sense" in addition to "ordinary sense" to interpret a treaty term, could this be considered an implicit invocation of Article 31.4 of the *Vienna Convention*? If so, who bears the burden to prove that a "special meaning" of a treaty term was intended?
- (d) If a "special meaning" is to be given to a treaty term according to Article 31.4 of the *Vienna Convention*, what is the relationship between this provision and the elements of the preceding paragraphs of Article 31, in particular those related to context and elements to be taken into account together with context?

1. See Japan's Answers to the Panel's questions 14 and 15 to the Parties.

2. (All Third parties) What is the role, if any, of Article 32 of the *Vienna Convention on the Law of Treaties* concerning supplementary means of interpretation in this dispute?

2. See Japan's Answer to the Panel's question 12 to the Parties.

3. (All Third parties) What is the legal nature and relevance of the ITA to this dispute?

3. See Japan's Answers to the Panel's questions 1 and 2 to the Parties.

4. (All Third parties) To what extent if any does "technological development" of products affect the determination of the scope of tariff treatment?

4. See Japan's Answers to the Panel's questions to the parties (e.g. Question 3, 4, 13 and others.)

5. (All Third parties) What is your view on the European Communities' arguments that a case-by-case assessment is necessary to determine the appropriate classification of the products at issue?

5. See Japan’s Answer to the Panel’s question 23 to the Parties.

6. (All Third parties) Assuming the HS96 interpretative rules are relevant as context for the interpretation of the concessions in the EC Schedule, what would be -in general terms- the interplay amongst the different rules which have been cited, i.e.: 1) GIR 3; 2) the Note 3 to Section XVI; and 3) the Note 5 to HS 84. In other words, when will one rule be applied *instead* of another? Is there an order in which the rules must be applied? If so, what determines that order?

6. See Japan’s Answer to the Panel’s question 20 to the Parties.
