

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

**WT/DS375, WT/DS376, WT/DS377**

**ANSWERS OF THE UNITED STATES OF AMERICA  
TO THE EC'S QUESTIONS TO THE CO-COMPLAINANTS  
IN CONNECTION WITH THE SECOND SUBSTANTIVE PANEL MEETING**

**July 24, 2009**

### ***Question 1***

***It is the EC's understanding (based on, inter alia, paragraphs 8, 15 and 25 of the US second oral statement) that the complainants argue that all set top boxes with (or "which have" ) a communication function and a hard disk drive covered by the challenged EC measures are treated by the EC inconsistently with its WTO obligations. Is this understanding correct? If not, could you please explain why it is incorrect and what the position of the complainants is?***

1. The complainants' argument is as follows. The EC measures provide that *any* STB which has a communication function is subject to duty, merely because it incorporates a device performing a recording or reproducing function. As a result, the EC imposes duties on STBs which have a communication function. In its Schedule, the EC committed to provide duty free treatment to set top boxes which have a communication function, wherever classified, and to set top boxes with a communication function associated with subheading 8528 12 91. By imposing duties on these products, the EC acts inconsistently with its obligations under its Schedule and Article II:1(a) and II:1(b) of the GATT 1994. The argument of the United States has been described in detail in previous submissions.<sup>1</sup> As the United States has also explained, contrary to what the EC has argued, beyond demonstrating that *measures* subject to the Panel's terms of reference breach specific *concessions* made by the EC, the complainants do not have an obligation to define a so-called "product at issue."

### ***Question 2***

***Referring to Exhibit US-78 and in particular to the 30 inch Apple Cinema Display, the EC understands that this monitor is capable of operating at a resolution of 1920 x 1200 which renders it compatible with apparatus such as the one you can find at the following link [http://www.gefen.com/kvm/product.jsp?prod\\_id=2566](http://www.gefen.com/kvm/product.jsp?prod_id=2566). Could the complainants please confirm?***

2. As the product manual for the apparatus identified by the EC specifically states, it is *not* capable of operating with the 30 inch Apple Cinema Display.<sup>2</sup> The web site also indicates that this product has been discontinued.<sup>3</sup> As explained in response to Panel Question 143, the Apple Cinema Display requires a CPU to operate. It should be noted that even if a user could add an adapter or similar device to the display to allow other devices to connect to it, that does not refute the notion that the product itself is solely for use with a computer.

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<sup>1</sup>E.g., U.S. First Written Submission, paras. 84-111; U.S. Second Written Submission, paras. 23-65.

<sup>2</sup>See <http://www.gefen.com/pdf/HD-SDI%20TO%20DVI%20Conversion%20Box%20Manual.pdf>, at p. 8.

<sup>3</sup>See [http://www.gefen.com/kvm/product.jsp?prod\\_id=2566](http://www.gefen.com/kvm/product.jsp?prod_id=2566).

### **Question 3**

***To the extent that EC understands them, the two claims made in relation to 'certain flat panel displays' include LCD TVs which are connectable to an ADP machine. Do the claims cover all ADP connectable LCD TVs? If not, which types of apparatus are covered and which ones are not? Is there a difference between the scope of the two claims in this respect?***

3. The complainants' argument is as follows. The EC measures provide that *any* flat panel display device is subject to duty, merely because it incorporates a DVI connector or is capable of connecting to a device other than a computer. As a result, the EC imposes duties on flat panel display devices "for" products falling within the ITA, as well as "input or output units" of ADP machines. In its Schedule, the EC committed to provide duty free treatment to flat panel display devices for products falling within the ITA, wherever classified, and to "input or output units" associated with subheading 8471 60. By imposing duties on these products, the EC acts inconsistently with its obligations under its Schedule and Article II:1(a) and II:1(b) of the GATT 1994. The argument of the United States has been described in detail in previous submissions.<sup>4</sup> As the United States has also explained, contrary to what the EC has argued, beyond demonstrating that *measures* subject to the Panel's terms of reference breach specific *concessions* made by the EC, the complainants do not have an obligation to define a so-called "product at issue." The claims are different because the terms of the concessions are different.

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<sup>4</sup>E.g., U.S. First Written Submission, paras. 120-143 ; U.S. Second Written Submission, paras. 66-101.