

# India loses dispute in WTO on tariff treatment of certain goods in Information and Communications Technology Sector

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1. Vide reports dated 17 April 2023, panels set up by Dispute Settlement Body (DSB) of World Trade Organization (WTO) in dispute settlement numbers DS-582, DS-584, and DS-588 have held as under:
  - a) India's tariff treatment of certain goods in information and communications technology sectors is inconsistent with India's commitments under the General Agreement on Tariffs and Trade, 1994 (Article II: 1(a) and (b) of the GATT, 1994) because i) certain such products are subject to ordinary customs duties in excess of those set forth in India's WTO Schedule; (ii) certain such products are subject to ordinary customs duties in excess of those set forth in India's WTO Schedule unless they satisfy certain conditions that are not set forth in that WTO Schedule; and iii) India's tariff treatment of such products is less favourable than that provided in its WTO Schedule.
  - b) To the extent the measures at hand are inconsistent with India's commitments under the GATT, 1994, they have nullified or impaired benefits accruing to the complainants/members under that agreement; and
  - c) To the extent that India's tariff treatment of these goods in information and communications technology sector continues to be inconsistent with Article II: 1 (a) and (b) of the GATT, 1994, it is recommended that India bring such measures into conformity with its obligations under the GATT, 1994.
2. Now let us closely look at the goods in India's WTO Schedule which are subject matter of this ruling and the inconsistencies as held by the panels:

S. No	HSN Classification under India's WTO Schedule	Bound rate of Customs duty in India's WTO Schedule	HSN Classification under First Schedule of India's Customs Tariff Act (CTA)	Customs Duty Rate under the Tariff Act
a)	8504.40.02: Static Converters for automatic data processing machines and units thereof, and telecommunication apparatus	0%	8504.40.90: - Static Converters ---'Others'	20% subject to notifications providing exemption only to a few items under the tariff code.

b)	8517.12: Telephones for cellular networks or for other wireless networks	0%	8517.13.00: -- Smartphones  8517.14.00: -- Other telephones for cellular networks or for other wireless networks	20%  20% subject to notifications providing exemption only to a few items under the tariff code.
c)	8517.61: Base Stations	0%	8517.61.00: -- Base Stations	20%
d)	8517.62: Machines for the reception, conversion and transmission or regeneration of voice, images or other data	0%	8517.62.90: -- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus --- Other	20% subject to notifications providing a lower rate of duty @10% and exemption only to a few items under the tariff code.
e)	8517.70.01/02/03: Parts and accessories of the machines of heading 84.71	0%	8517.79: - Parts -- Other  8517.79.10: --- Populated, loaded or stuffed printed circuit boards  8517.79.90: --- Other	20% subject to notifications providing a lower rate of duty @10% and exemption only to a few items under the tariff code.  15% subject to notifications providing exemption only to a few items under the tariff code.

3. From the discussion till now, it is clear that while India's WTO schedule continued to carry its commitments under the GATT, 1994 with zero binding custom duty on the above products, we went ahead and made changes to our First Schedule of CTA, and levied and recovered duties on imports accordingly.

4. India's WTO Schedule setting forth concessions and commitments was aligned to HS nomenclature (HSN) established and administered by World Customs Organization (WCO). The WCO regularly amends the HSN and in WTO, members' schedule are regularly updated in order to reflect newer version of HSN. Bulk of the changes carving out HSN 8517.12, 8517.61, 8517.62 and 85.17.70 were brought in by 2007 version of HSN issued by WCO, key reason mentioned for such revision being technological progress in high technology sector.
5. India did not raise any objection to the changes made by WTO Secretariat in India's WTO Schedule (though there is a detailed framework of '1980 Procedure for the modification and rectification of Schedules' allowing members to make amendments to their WTO Schedule), mainly because our First Schedule to CTA was in line with 2007 version of HSN issued by WCO with 'nil' duties charged on all these products. It was only in the beginning of 2017 that India started levying duties on these products under the framework of its 'Phased Manufacturing Program'.
6. For the first time, in September 2018, India requested that its WTO Schedule be rectified, in accordance with 1980 framework, in order to correct certain errors which were left there due to oversight by India and had crept in due to changes made consequent to 2007 version of HSN issued by WCO. It was specifically requested that HSN 85.17.12, 8517.61, 8517.62 & 8517.70 be moved from 'bound' to 'unbound' category. India argued that these products were not covered in India's commitment under ITA, and the requested rectification will not alter its commitment either under GATT, 1994 or ITA. Several members objected to India's rectification request under 1980 framework and therefore, such rectification has not been carried out & certified till the date of reports issued by panels.
7. In the ensuing dispute, India raised many arguments, primary amongst them were that: i) the products at issue are not covered under the ITA, and the HSN 2007 Schedule which was certified in error included products not originally covered by the ITA; ii) since the products at issue are not covered under ITA, the draft rectification circulated by India in 2018 is of pure formal character. Therefore, the objection raised by members to the draft rectification was unfounded, contrary to paragraph 3 of 1980 framework, and impeded India's right to rectify its schedule under this framework, and iii) the commitment under the contested sub-headings of India's WTO schedule are invalid due to 'error' within the meaning of Article 48 of Vienna Convention on the Law of Treaties. All these arguments raised by India were duly considered and disposed of against India after detailed discussions, and adverse reports were issued by the panels.
8. As a way forward, as per recent news reports, India is likely to appeal against the panel reports to the appellate body of WTO which is the final authority on these trade disputes. ( source: [www.economictimes.indiatimes.com](http://www.economictimes.indiatimes.com) )
9. It is pre-mature to guess the outcome of appeal in this matter. However, in case the appeal is rejected, it will be interesting to see the impact of this ruling on disputes currently under litigation in relation to these products. We will keep a close eye.

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