decisively in the opposite direction. The Appellate Body has observed in *Reformulated Gasoline*[22] that where there is no discrimination either in form or in reality, there is no reason why any inconsistency with Article III should arise. That principle is equally applicable here.

27. Even if the products at issue here were "like products", the non-discriminatory nature of the measure would provide a complete answer to the U.S. complaint. In its recent decision on *Japanese Liquor Taxes*,[23] the Appellate Body held that where imported products are taxed in excess of "like domestic products", the general principle set out in Article III:1 may be assumed to have been violated. There is consequently no need to apply that principle as a "separate test" in order to find an inconsistency with Article III:2, first sentence. The Appellate Body has thus established a balance in the interpretation of Article III:2. The concept of "like products" is to be very narrowly construed, on a case-by-case basis in a way that requires "discretionary judgment"; but once the determination is made, excess taxation of imported products entails a violation without any need to conduct a further inquiry under paragraph 1. The essential elements of the interpretation of this provision have thus been authoritatively identified.

28. One question, however, was not addressed in the recent decision: whether taxation of imported products "in excess of" like products is to be determined in terms of classes of products, or whether any single instance of differential taxation creates an automatic *per se* violation even when it results from fiscal classifications that are not themselves discriminatory in form or in fact. The answer is clear both from the wording of Article III:2, first sentence, and from the object and purpose of Article III as a whole, which is the prevention of discrimination against imported products. The use of the plural in referring to "imported products" and "like domestic products" indicates clearly that the concern is with classes of products, not with the isolated instances of differential taxation that necessarily result when product "A" is taxed at a different rate than product "B" because it happens to fall into a different, but non-discriminatory, fiscal classification.

29. This interpretation also seems necessary to create a workable rule. Article III:2 was not intended to impose fiscal harmonization in rates, methods or classifications. It therefore remains not only possible but inevitable that domestic fiscal classifications may in certain instances have the effect of subdividing or straddling "like product" categories, or otherwise crossing "like product" category lines. Since fiscal classifications have no other purpose than to allow differences in tax treatment, any such classifications that failed to correspond precisely to "like product" categories under Article III:2, first sentence, would automatically lead to a violation. Quite apart from imposing a degree of harmonization that goes beyond the language or the purpose of this provision, such an interpretation would lead to an

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[22] *United States – Standards for Reformulated and Conventional Gasoline* (Report of the Appellate Body, 29 April 1996), AB-1996-1, WTO Doc. WT/DS2/AB/R.

[23] *Japanese Liquor Tax Appeal*, *supra* note 11.