

and I:1, it is justifiable under the general exception in GATT Article XX(d).⁴⁷ However, the EC's argument fails to take into account the fact that GATT 1947 panels have construed Article XX narrowly, placing the burden on the party invoking an exception to justify its application.⁴⁸ The EC has not met its burden of proof in this case.

76. Several conditions must be satisfied to justify under Article XX(d) a measure that is otherwise inconsistent with the GATT, namely:

- i. there must be a law or regulation that is not GATT-inconsistent requiring enforcement;
- ii. the measure in question must be "necessary" to secure compliance with that law or regulation; and
- iii. the measure must not be applied in a manner that constitutes arbitrary or unjustifiable discrimination between countries where the same conditions prevail, and must not constitute a disguised restriction on international trade.

Each of these conditions must be met if an inconsistency with another GATT provision is to be justified under Article XX(d).⁴⁹ A measure that fails to meet any one of these conditions cannot be justified under Article XX(d).⁵⁰

- (i) *The EC has failed to identify a GATT-consistent law or regulation requiring enforcement*

77. For the EC to establish that the Order meets the first condition under Article XX(d), it would have to establish that there is a GATT-consistent law or regulation that requires enforcement, and with which the Order would secure compliance.⁵¹ The GATT 1947 Panel in *European Economic Community - Regulation on Imports of Parts and Components* stated that

Article XX(d) covers only measures related to the enforcement of

⁴⁷ See paragraph 109 of the EC's first written submission.

⁴⁸ *Supra*, note 40, at paragraph 5.41.

⁴⁹ *Supra*, note 35, at paragraphs 5.22-5.23.

⁵⁰ *Ibid.*

⁵¹ *European Economic Community - Regulation on Imports of Parts and Components*, Report of the Panel adopted 16 May 1990, BISD 37S/132.
