

US – COTTON YARN¹

(DS192)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>Pakistan</i>	<i>ATC Art. 6</i>	Establishment of Panel	<i>19 June 2000</i>
			Circulation of Panel Report	<i>31 May 2001</i>
Respondent	<i>United States</i>		Circulation of AB Report	<i>8 October 2001</i>
			Adoption	<i>5 November 2001</i>

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Transitional safeguard remedy imposed by the United States under the ATC on certain imports.
- **Product at issue:** Imports of combed cotton yarn from Pakistan.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **ATC Art. 6.2 (transitional safeguard measure – scope of domestic industry):** The Appellate Body upheld the Panel's ultimate conclusion that the United States acted inconsistently with Art. 6.2 by excluding from the scope of the domestic industry captive production of yarn (i.e. yarn produced by and processed and consumed within integrated producers for their own use and processing), which was found to be "directly competitive" with yarn offered for sale on the merchant (open) market. In this regard, the Appellate Body considered the term "directly competitive" to suggest a focus on the competitive relationship of products, including not only actual but also "potential competition".
- **ATC Art. 6.4 (transitional safeguard measures – attribution of serious damage):** The Appellate Body found that (i) Art. 6.4 requires a "comparative analysis" when there is more than one Member from whom imports have shown a sharp and substantial increase and (ii) under such a comparative analysis, "the full effects" of the factors (i.e. level of imports, market share and prices) can be assessed only if they are compared individually with the levels of the other Members from whom imports have also increased sharply and substantially. As such, it upheld the Panel's ultimate finding that the United States acted inconsistently with Art. 6.4 by failing to examine the effect of imports from Mexico individually when attributing serious damage to Pakistan. The Appellate Body, however, declined to rule on the broader interpretive question of whether Art. 6.4 requires attribution to all Members from which imports increase in a sharp and substantial manner. (The Panel's interpretation was found to have no legal effect.) The Panel also found that the US determination of "actual threat of serious damage" was not justifiable under Art. 6.4, as the underlying US finding of serious damage in this case was found to be flawed.

3. OTHER ISSUES

- **Standard of review (DSU Art. 11 in the context of ATC Art. 6.2):** The Appellate Body found that the Panel in this case exceeded its mandate according to the standard of review under DSU Art. 11 by considering, in the context of reviewing a determination under ATC Art. 6.2, certain data, which did not exist and thus could not have been known by the investigating authority at the time of its determination. A panel was not entitled to review the determination with the benefit of hindsight and to re-investigate *de novo*. The Appellate Body, however, emphasized the limited nature of its finding and clarified that it was not deciding a more general question of, *inter alia*, whether a panel may consider evidence relating to facts that occurred subsequent to the determination.

¹ *United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*

² Other issues addressed: serious damage; injury factors (ATC Arts. 6.2 and 6.3); investigation period (ATC Art. 6); specific suggestion for implementation (DSU Art. 19.1); panel's approach to the descriptive part of the panel report.