

# US – UNDERWEAR<sup>1</sup>

(DS24)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Costa Rica	ATC Art. 6 GATT Art. X:2	Establishment of Panel	5 March 1996
			Circulation of Panel Report	8 November 1996
Respondent	United States		Circulation of AB Report	10 February 1997
			Adoption	25 February 1997

## 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Quantitative import restriction imposed by the United States, as a transitional safeguard measure under ATC Art. 6.
- **Product at issue:** Underwear imports from Costa Rica.

## 2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ATC Art. 6.10 (transitional safeguard measures – prospective application):** The Appellate Body reversed the Panel's finding and concluded that in the absence of express authorization, the plain language of Art. 6.10 creates a presumption that a measure may be applied only prospectively, and thus may not be backdated so as to apply as of the date of publication of the importing Member's request for consultation.
- **ATC Art. 6.2 (transitional safeguard measures – serious damage and causation):** The Panel refrained from making a finding on whether the United States demonstrated "serious damage" within the meaning of Art. 6.2, stating that ATC Art. 6.3 does not provide sufficient and exclusive guidance in this case. However, the Panel found that the United States had not demonstrated actual threat of serious damage, and therefore had violated Art. 6. The Panel also found that the United States failed to comply with its obligation to examine causality under Art. 6.2.
- **GATT Art. X:2 (trade regulations – enforcement):** Although disagreeing with the Panel's application of Art. X:2 to the issue of backdating under ATC Art. 6.10, the Appellate Body agreed with the Panel's general interpretation of Art. X:2 that certain country-specific measures may constitute "measures of general application" under Art. X:2, although a company or shipment-specific measure may not. It also noted the fundamental importance of Art. X:2 which reflects the "principle of transparency" and has "due process dimensions".

## 3. OTHER ISSUES<sup>2</sup>

- **Standard of review (DSU Art. 11):** This was the first panel to refer to Art. 11 as its standard of review in examining a determination reached by a WTO Member under a WTO Agreement. The Panel found that its standard of review in this case was to make an "objective assessment" which entails "an examination of whether the US investigating authority had examined all relevant facts before it, whether adequate explanation had been provided of how the facts as a whole supported the determination made, and consequently, whether the determination made was consistent with the international obligation of the United States".

<sup>1</sup> *United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear*

<sup>2</sup> Other issues addressed: burden of proof (ATC Art. 6 as an exception); treaty interpretation (VCLT in relation to the interpretation of the ATC); structure of ATC Art. 6; panel's evidentiary scope of review (DSU Art. 4.6).