

US – WOOL SHIRTS AND BLOUSES¹

(DS33)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>India</i>	<i>ATC Arts. 6 and 2.4</i>	Establishment of Panel	<i>17 April 1996</i>
			Circulation of Final Report	<i>6 January 1997</i>
Respondent	<i>United States</i>		Circulation of AB Report	<i>25 April 1997</i>
			Adoption	<i>23 May 1997</i>

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Temporary safeguard measure imposed by the United States in the form of a quota on certain imports from India.
- Products at issue: Woven wool shirts and blouses from India.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- ATC Art. 6 (serious damage and causation): The Panel found that the United States violated Art. 6 (6.2 and 6.3) because it failed to meet the causation and serious damage (and threat of serious damage) requirements therein when imposing its transitional safeguard measure, in particular, by not examining the data relevant to the "woven wool shirts and blouses industry", as opposed to the "woven shirts and blouses industry in general". The Panel also considered the list of industry impact factors in Art. 6.3 to be a mandatory list: an investigating authority must demonstrate that it considered the relevance or otherwise of each of the listed items in Art. 6.3. Moreover, the Panel stated that under Art. 6.3, "some consideration and a relevant and adequate explanation have to be provided of how the facts as a whole support the conclusion that the termination is consistent with the requirements of the ATC".
- ATC Art. 2.4: The Panel found that, by violating Art. 6, the United States also violated Art. 2.4, which prohibits the imposition of restraints on the import of textiles and clothing beyond those restraints permitted under the ATC.

3. OTHER ISSUES²

- Burden of proof: Upholding the Panel's interpretation and adopting the rule used by most international tribunals, the Appellate Body clarified the rule on the burden of proof by stating that "the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence". Also, the Appellate Body found that ATC Art. 6, which governs transitional safeguards with respect to textile products, does not constitute an affirmative defence, but rather a "fundamental part of the rights and obligations of WTO Members ... during the [ATC] transition period", and thus, a Member claiming that the United States violated this right must "assert and prove its claim."
- Judicial economy: The Appellate Body upheld the Panel's exercise of judicial economy and found that, under DSU Art. 11, panels are not required to make a finding on every claim raised, but rather panels may practise "judicial economy" and make findings on only those claims necessary to resolve a dispute.

¹ *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*

² Other issues addressed: Appellate Body's revised schedule (Working Procedures for Appellate Review, Rule 16(2)); scope of appellate review (DSU Art. 17.13); expired measure (panel's mandate in its terms of reference); standard of review; role of the TMB and dispute settlement mechanism.