

TURKEY – TEXTILES¹

(DS34)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	India	GATT Arts. XI, XIII and XXIV	Establishment of Panel	13 March 1998
			Circulation of Panel Report	31 May 1999
Respondent	Turkey	ATC Art. 2.4	Circulation of AB Report	22 October 1999
			Adoption	19 November 1999

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Turkey's quantitative import restrictions pursuant to the Turkey-EC customs union.
- Product at issue: Textiles and clothing from India.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- GATT Arts. XI and XIII (quantitative restrictions): The Panel found that the quantitative restrictions at issue were inconsistent with Art. XI and XIII. (Turkey itself did not deny this.)
- ATC Art. 2.4: The Panel found that Turkey's measures were *new* restrictions, which did not exist at the time of the entry into force of the ATC, and, thus, were prohibited by Art. 2.4.
- GATT Art. XXIV (customs union): The Appellate Body agreed with the Panel's ultimate conclusion that Turkey's measures were not justified under Art. XXIV because there were alternatives available to Turkey that would have met the requirements of Art. XXIV:8(a), which were necessary to form the customs union, other than the adoption of the quantitative restrictions. The Appellate Body, therefore, modified the Panel's legal reasoning and concluded that in order to determine whether a measure found inconsistent with certain other GATT provisions can be justified under Art. XXIV, a panel should examine two conditions: (i) whether a "customs union", as defined in Art. XXIV:8 exists (compatibility of a customs union with the provisions of Art. XXIV); and (ii) whether the formation of a customs union would be prevented without the inconsistent measure (i.e. whether the measure is necessary for the formation of a customs union). (The Panel had assumed the existence of the customs union and moved on to examine the necessity of the measure.)

3. OTHER ISSUES²

- GATT Art. XXIV (burden of proof): The Appellate Body agreed with the Panel that Art. XXIV may be considered as a "defence" or "exception" to a violation. The Panel also held that the burden of proof under Art. XXIV was on the party invoking it.
- Information from Member not party to the dispute (DSU Art. 13.2): Despite the fact that the European Communities was not a party or a third party to the dispute, the Panel asked the European Communities, pursuant to DSU Art. 13.2, for factual and legal information relevant to this case to have "the fullest possible understanding of this case". The European Communities provided answers to the Panel's questions.

¹ *Turkey – Restrictions on Imports of Textile and Clothing Products*

² Other issues addressed in this case: preliminary ruling on Turkey's claim for the dismissal of India's claims (non-participation of European Communities as respondent); entity to which the measures could be attributed (Turkey, EC or the Turkey-EC customs union); preliminary ruling on the sufficiency of the Panel request (DSU Art. 6.2, identification of measures); role of the TMB; adequacy of consultations (GATT Art. XXII and DSU Art. 4); scope of disputes under GATT Art. XXIV.