

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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UNITED STATES - MEASURES AFFECTING THE IMPORTATION  
AND INTERNAL SALE AND USE OF TOBACCO

Recourse to Article XXIII:2 by Argentina

The following communication, dated 9 February 1994, has been received from the Permanent Representative of the Republic of Argentina with the request that it be circulated to contracting parties and inscribed on the agenda of the Council meeting of 22 February 1994.

As explained in document DS44/1 (7 September 1993), Article 1106 of the "Omnibus Budget Reconciliation Act of 1993" of the United States signed on 10 August 1993 amends the "Agricultural Adjustment Act of 1938", by including provisions to protect domestically-produced tobacco, to the detriment of the imported product. According to the Act, United States manufacturers are required to use yearly a minimum of 75 per cent of locally-produced tobacco in the manufacturing of cigarettes and heavy penalties are imposed on manufacturers who do not comply with that requirement.

Furthermore, the Act includes three assessments to be paid on raw tobacco imports: (1) a fee on imports of flue-cured and burley tobacco to fund the domestic price support programme; (2) an inspection fee to be levied on imported tobacco; and (3) a marketing assessment fee to be paid by importers of flue-cured and burley tobacco.

These provisions will seriously affect Argentina's tobacco exports to the United States, a market which in the last two years accounted for almost 40 per cent of Argentina's total tobacco exports. Argentina's sales to the United States represented 17,820 and 15,568 tons in 1992 and 1993, respectively. In terms of value, for the same years, exports stood at 45.8 and 41.4 million dollars, a significant increase on the levels in previous years.

Furthermore, the Act will tend to reduce other countries' exports to the United States, thus reducing tobacco prices throughout the world, which will have serious repercussions for Argentine producers if market substitution is imperfect.

As requested by Argentina and other countries (DS44/1) under Article XXIII:1 of the General Agreement, on 4 October 1993 consultations were held with the United States on measures applied by the United States on the importation and internal sale of tobacco.

As you may recall, at prior meetings of the Council it was stated that the United States' oral and written replies to the questions drawn up during the consultations were not satisfactory.

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The provisions of the enabling legislation published in the Federal Register on 23 December 1993 and 11 January 1994 also fail to make any substantial amendment to the legislation to bring it into conformity with the provisions of the General Agreement.

The restrictions laid down by the United States on imported tobacco violate the provisions of Article III:1, 2, 4 and 5 and Article VIII:1 of the General Agreement and may be in breach of Article II and Article XI:1. Similarly, they may also nullify or impair benefits Argentina could reasonably have expected when the United States tariff on raw tobacco was bound.

As there is no evidence that the United States is prepared to find a mutually satisfactory solution in this area and in view of the harmful effects of the Act on Argentine tobacco producers and exporters, Argentina requests that a panel be established, pursuant to Article XXIII:2 of the General Agreement to examine the conformity of the United States legislation with the provisions of the General Agreement.