

TURKEY – TEXTILES¹

(DS34)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	India	GATT Arts. XI, XIII and XXIV ATC Art. 2.4	Establishment of Panel	13 March 1998
			Circulation of Panel Report	31 May 1999
Respondent	Turkey		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 (prohibition on quantitative restrictions) and XIII (non-discriminatory administration of quantitative restrictions):** The Panel found that the quantitative restrictions at issue were inconsistent with Arts. XI and XIII. (Turkey did not deny this.)
- **ATC Art. 2.4 (prohibition on new restrictions):** The Panel found that Turkey's measures were *new* restrictions, that 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 (regional trade agreements):** 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 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

- **Burden of proof (GATT Art. XXIV):** 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 non-party Member (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 Art. 13.2, for relevant factual and legal information so as 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: 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, European Communities or the Turkey-European Communities 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.