

ARGENTINA – FINANCIAL SERVICES¹

(DS453)

| PARTIES | | AGREEMENT | TIMELINE OF THE DISPUTE | |
|-------------|------------------|--|-----------------------------|--------------------------|
| Complainant | <i>Panama</i> | <i>GATS Arts. II:1, XVI, XVII</i> <i>GATT Arts. I:1, III:2, III:4, XI:1</i> | Establishment of Panel | <i>25 June 2013</i> |
| | | | Circulation of Panel Report | <i>30 September 2015</i> |
| Respondent | <i>Argentina</i> | | Circulation of AB Report | <i>14 April 2016</i> |
| | | | Adoption | <i>9 May 2016</i> |

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Withholding tax on payments of interest or remuneration (measure 1); presumption of unjustified increase in wealth (measure 2); transaction valuation based on transfer prices (measure 3); payment received rule for the allocation of expenditure (measure 4); requirements relating to reinsurance services (measure 5); requirements for access to the Argentine capital market (measure 6); requirements for the registration of branches (measure 7); and a foreign exchange authorization requirement (measure 8).
- **Products and services at issue:** Services and service suppliers from countries that Argentina qualified as countries not cooperating for tax transparency purposes.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATS Arts. II:1 and XVII:1 (likeness):** The Appellate Body considered that, in the absence of a finding that measures 1-8 provided for a distinction based exclusively on origin, and by failing to conduct an analysis of “likeness” on the basis of the arguments and evidence presented by Panama, the Panel had erred in finding “likeness” “by reason of origin”. On this basis, the Appellate Body reversed the Panel’s finding of likeness of the services and service suppliers at issue under Arts. II:1 and XVII:1.²
- **GATS Arts. II:1 and XVII:1 (less favourable treatment):** The Appellate Body found that, under Arts. II:1 and XVII, a measure fails to confer “treatment no less favourable” if it modifies the conditions of competition to the detriment of services or service suppliers of another Member. The Appellate Body held that the Panel adopted an erroneous legal standard whereby an analysis of the “regulatory aspects” could potentially render a measure consistent with Arts. II:1 and XVII, even if the measure modified the conditions of competition. Where a measure was inconsistent with the non-discrimination provisions of the GATS, regulatory aspects were more appropriately addressed in the context of the relevant exceptions. Consequently, the Appellate Body reversed the Panel’s conclusions under Art II:1 and Art XVII.
- **GATS Art. XIV(c) (measures necessary to secure compliance):** The Appellate Body concluded that Panama had not demonstrated that the Panel erred in its application of Art. XIV(c) to measures 1, 2, 3, 4, 7, and 8: (1) by failing to focus its analysis on relevant aspects of the measures that gave rise to the findings of inconsistency with Art. II:1 thereof, or (2) by finding that these measures are designed and necessary to secure compliance with the relevant Argentine laws or regulations under Art. XIV(c).
- **Paragraph 2(a) of the GATS Annex on Financial Services (prudential exception):** The Appellate Body concluded that the Panel had not erred in finding that para. 2(a) of the Annex on Financial Services covers all types of measures affecting the supply of financial services within the meaning of para. 1(a) of the Annex.

¹ *Argentina – Measures Relating to Trade in Goods and Services*

² The Panel’s finding of likeness under GATS Art. XVII was based on its finding of likeness under GATS Art. II:1 of the GATS. In reversing the Panel’s findings of “likeness”, the Appellate Body rendered moot the Panel’s findings on “treatment no less favourable”, as well as the Panel’s analysis of Argentina’s defences under Art. XIV(c) and para. 2(a) of the GATS Annex on Financial Services. Nonetheless, recognizing that Panama’s appeal concerned “issues of law covered in the panel report and legal interpretations developed by the panel”, and that it had implications for the interpretation of Arts. II:1 and XIV(c) of the GATS and paragraph 2(a) of the GATS Annex on Financial Services, the Appellate Body addressed the issues raised in Panama’s appeal.