

# ARGENTINA – TEXTILES AND APPAREL<sup>1</sup>

## (DS56)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	GATT Arts. II and VIII	Establishment of Panel	25 February 1997
			Circulation of Panel Report	25 November 1997
Respondent	Argentina		Circulation of AB Report	27 March 1998
			Adoption	22 April 1998

### 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Argentina's system of minimum specific import duties, known as "DIEM", on textiles and apparel (under which textiles and apparel were subject to either a 35 per cent *ad valorem* duty or a minimum specific duty, whichever was higher); and (ii) statistical services tax imposed on imports to finance "statistical services to importers, exporters and the general public".
- **Product at issue:** Imported textiles and apparel.

### 2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. II (schedules of concessions):** The Appellate Body found Argentina's measure was, in fact, inconsistent with Art. II:1(b). It held that "the application of a type of duty different from the type provided for in a Member's Schedule is inconsistent with GATT Art. II:1(b), first sentence, to the extent that it results in ordinary customs duties being levied in excess of those provided for in that Member's Schedule." In this case, the Appellate Body concluded that "the structure and design of the Argentine system is such that for any DIEM ... the possibility remains that there is a 'break-even' price below which the *ad valorem* equivalent of the customs duty collected is in excess of the bound *ad valorem* rate of 35 per cent."
- **GATT Art. VIII (fees and formalities):** The Appellate Body upheld the Panel's findings that the statistical tax on imports violated Argentina's obligations under Art. VIII:1(a) "to the extent it results in charges being levied in excess of the approximate costs of the services rendered as well as being a measure designated for fiscal purposes". The Appellate Body also rejected Argentina's argument that the Panel had violated DSU Arts. 11 and 12.7 based on the Panel's failure to consider Argentina's IMF obligations as set forth in a "Memorandum of Understanding" between Argentina and the IMF. The Appellate Body held, *inter alia*, that Argentina failed to show "an irreconcilable conflict" between the Understanding and GATT Art. VIII, and that no other international agreements or understandings regarding the WTO and IMF justified a conclusion that a Member's IMF commitments prevail over its GATT Art. VIII obligations.

### 3. OTHER ISSUES<sup>2</sup>

- **Panel's right to seek expert advice (DSU Art. 13):** The Appellate Body found that the Panel acted within the bounds of its discretionary authority under DSU Art. 13 when it did not accede to the parties' request to seek the advice of the IMF on Argentina's statistical tax. It noted that while an IMF consultation might have been useful, the Panel did not abuse its discretion by declining to engage in such a consultation. (It also noted that the only provision that requires consultations with the IMF is GATT Art. XV:2)
- **Review of a revoked measure:** The Panel declined to review a revoked measure (revoked after the panel request but before its establishment), when Argentina raised an objection to the Panel's examination of such a measure.

<sup>1</sup> Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items

<sup>2</sup> Other issues addressed: objective assessment (DSU Art. 11); terms of reference (revoked measure); burden of proof; submission of evidence.