



## ARGENTINA – MEASURES RELATING TO TRADE IN GOODS AND SERVICES

AB-2015-8

*Report of the Appellate Body*

*Addendum*

This Addendum contains Annexes A to C to the Report of the Appellate Body circulated as document WT/DS453/AB/R.

The Notices of Appeal and Other Appeal and the executive summaries of written submissions contained in this Addendum are attached as they were received from the participants and third participants. The content has not been revised or edited by the Appellate Body, except that paragraph and footnote numbers that did not start at one in the original may have been re-numbered to do so, and the text may have been formatted in order to adhere to WTO style. The executive summaries do not serve as substitutes for the submissions of the participants and third participants in the Appellate Body's examination of the appeal.

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**LIST OF ANNEXES****ANNEX A**

## NOTICES OF APPEAL AND OTHER APPEAL

<b>Contents</b>		<b>Page</b>
Annex A-1	Panama's Notice of Appeal	A-2
Annex A-2	Argentina's Notice of Other Appeal	A-4

**ANNEX B**

## ARGUMENTS OF THE PARTIES

<b>Contents</b>		<b>Page</b>
Annex B-1	Executive summary of Panama's appellant's submission	B-2
Annex B-2	Executive summary of Argentina's other appellant's submission	B-4
Annex B-3	Executive summary of Argentina's appellee's submission	B-7
Annex B-4	Executive summary of Panama's appellee's submission	B-10

**ANNEX C**

## ARGUMENTS OF THE THIRD PARTICIPANTS

<b>Contents</b>		<b>Page</b>
Annex C-1	Executive summary of Australia's third participant's submission	C-2
Annex C-2	Executive summary of Brazil's third participant's submission	C-3
Annex C-3	Executive summary of the European Union's third participant's submission	C-4
Annex C-4	Executive summary of Guatemala's third participant's submission	C-6
Annex C-5	Executive summary of the United States' third participant's submission	C-7

**ANNEX A**

NOTICES OF APPEAL AND OTHER APPEAL

<b>Contents</b>		<b>Page</b>
Annex A-1	Panama's Notice of Appeal	A-2
Annex A-2	Argentina's Notice of Other Appeal	A-4

**ANNEX A-1****PANAMA'S NOTICE OF APPEAL\***

Pursuant to Article 16.4 and Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20(1) of the Working Procedures for Appellate Review, Panama hereby notifies its decision to appeal certain issues of law covered in the Panel Report in *Argentina – Measures relating to Trade in Goods and Services* (WT/DS453/R), which was circulated on 30 September 2015 (Panel Report). Pursuant to Rule 21(1) of the Working Procedures for Appellate Review, Panama is simultaneously filing this Notice of Appeal and its Appellant's Submission with the Appellate Body Secretariat.

Panama seeks review by the Appellate Body of the following errors of law contained in the Panel Report:

**i. The Panel erred in interpreting and applying the term "treatment no less favourable" in the context of Articles II:1 and XVII of the General Agreement on Trade in Services (GATS)**

The Panel interpreted the term "treatment no less favourable" in Articles II:1 and XVII of the GATS as permitting the consideration of "regulatory aspects" in the assessment of whether a measure modifies the conditions of competition in the relevant marketplace. The Panel considered that the relevant "regulatory aspect" in this dispute was whether Argentina has access to tax information on foreign suppliers. The Panel also considered that this regulatory aspect provides a competitive advantage to services and service suppliers of countries that do not exchange tax information with Argentina.

In essence, the Panel considered that when a Member imposes higher tax burdens or additional administrative requirements only on services or service suppliers of certain origin in order to neutralize a competitive advantage, that Member is not modifying the conditions of competition in the marketplace and, therefore, is not acting in a manner inconsistent with its obligations under Articles II:1 and XVII of the GATS to provide "treatment no less favourable".

The Panel's interpretation is inconsistent with established jurisprudence regarding the meaning of "treatment no less favourable" in these provisions and establishes a new legal standard that has no proper basis in either the text or context of Articles II:1 or XVII of the GATS, or in the object and purpose of these provisions or of the GATS itself.

Without prejudice to Panama's ability to refer to other paragraphs in the Panel Report, the Panel's incorrect interpretation is contained in paragraphs 7.212, 7.232, and 7.215 (for Article II:1 of the GATS<sup>1</sup>), as well as in paragraphs 7.490-7.494, 7.514-7.516, and 7.520-7.521 (for Article XVII of the GATS<sup>2</sup>) of the Report.

**ii. The Panel erred in applying the terms "necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement" within the meaning of Article XIV(c) of the GATS to the facts of the case**

Having found that measures 1, 2, 3, 4, 7, and 8 (as defined in paragraphs 2.13-2.22 and 2.37-2.40 of the Panel Report) were inconsistent with Article II:1 of the GATS, the Panel had to address Argentina's defences under Article XIV(c) of the GATS in the light of the well-developed legal standards for panels addressing defences raised under the exceptions contained in Article XX of the GATT 1994 and Article XIV of the GATS.

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\* This Notice, dated 27 October 2015, was circulated to Members as document WT/DS453/7.

<sup>1</sup> The Panel applied its incorrect interpretation in paragraphs 7.283-7.293, 7.300-7.302, 7.309-7.310, 7.319-7.320, 7.329-7.330, 7.339-7.340, 7.351-7.352, and 7.360-7.361 of the Report.

<sup>2</sup> The Panel applied its incorrect interpretation in paragraphs 7.500-7.525 of the Report.

In this case, Panama considers that the Panel failed to apply properly the relevant legal standard for an Article XIV(c) defence to the measures before it. In particular, the Panel failed to focus its analysis on the aspects of measures 1, 2, 3, 4, 7, and 8 that were found to accord less favourable treatment within the meaning of Article II:1 of the GATS to like services and service suppliers of non-cooperative countries.

Furthermore, the Panel focused its analysis on the question of whether the measures at issue secure compliance with the objectives of the relevant laws and regulations, and not on whether they secure compliance with the specific provisions of those laws and regulations referred to by Argentina.

In addition, the Panel erred in finding that Argentina had demonstrated that measures 1, 2, 3, 4, 7, and 8 were "designed" and are "necessary" to secure compliance with the relevant laws and regulations within the meaning of Article XIV(c) of the GATS. In particular:

- a. the Panel failed to conduct a proper analysis of the contribution of measures 1, 2, 3, 4, 7, and 8 to the objective of securing compliance with the relevant laws and regulations; and
- b. the Panel erred in finding that measures 1, 2, 3, 4, 7, and 8 have a limited trade-restrictive effect on international trade in services.

For these reasons, the Panel erred in finding that measures 1, 2, 3, 4, 7, and 8 were provisionally justified under Article XIV(c) of the GATS.

Without prejudice to Panama's ability to refer to other paragraphs in the Panel Report, the Panel's incorrect application of the relevant legal standard is contained in section 7.3.5.2 of the Panel Report, in particular, in paragraphs 7.637-7.642, 7.646-7.648, 7.692, 7.695, 7.700, 7.703, 7.705, 7.706-7.717, 7.720-7.728, and 7.737-7.740.

**iii. The Panel erred in interpreting the scope of paragraph 2(a) of the GATS Annex on Financial Services, which is entitled "Domestic Regulation"**

Having found measures 5 and 6 (as defined in paragraphs 2.23-2.36 of the Panel Report) to be GATS-inconsistent, the Panel was called upon to interpret paragraph 2(a) of the GATS Annex on Financial Services (prudential exception) and to determine whether Argentina had met its burden of establishing that measures 5 and 6 were justified under that provision.

In doing so, the Panel failed to interpret the scope of the prudential exception correctly. In particular, the Panel failed to give effect to the term "domestic regulation" in the title of the prudential exception, which determines the scope of this exception. The Panel incorrectly concluded that the prudential exception covers all types of measures affecting the supply of financial services and not only those measures that can be characterized as "domestic regulations".

Without prejudice to Panama's ability to refer to other paragraphs in the Panel Report, the Panel's finding reflecting its incorrect interpretation is contained in paragraph 7.847 of the Report.

**ANNEX A-2****ARGENTINA'S NOTICE OF OTHER APPEAL\***

1. Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23 of the *Working Procedures for Appellate Review* (WT/AB/WP/6) ("Working Procedures"), Argentina hereby notifies the Dispute Settlement Body of its decision to appeal certain issues of law and legal interpretation contained in the report of the Panel in *Argentina – Measures Relating to Trade in Goods and Services* (WT/DS453) ("Panel Report").

2. The issues that Argentina raises in this other appeal relate to the Panel's findings that services and service suppliers located in jurisdictions that Argentina designates as "cooperative" and "non-cooperative" under Decree No. 589/2013 and the defensive tax measures at issue in this dispute are "like" within the meaning of Articles II:1 and XVII of the General Agreement on Trade in Services ("GATS").

3. In particular, Argentina seeks review of the Panel's finding that services and service suppliers located in "cooperative" and "non-cooperative" jurisdictions are "like" under Article II:1 of the GATS.<sup>1</sup> The Panel erred in its interpretation and application of Article II:1 in concluding that the services and service suppliers at issue are "like" on the grounds that the measures at issue provide differential treatment "by reason of origin".<sup>2</sup> If the Appellate Body were to conclude that services and service suppliers may be considered "like" when a measure provides differential treatment "*exclusively* on the basis of origin", Argentina respectfully request that the Appellate Body find that the Panel erred in concluding that the services and services suppliers are "like" in the absence of a finding that the measures at issue provide differential treatment "exclusively" on the basis of origin.<sup>3</sup>

4. Argentina further considers that the Panel committed legal error under Article II:1 of the GATS by reversing the burden of proof and finding that it was incumbent upon Argentina to demonstrate that the services and service suppliers located in "cooperative" and "non-cooperative" jurisdictions are *not* like under that provision.<sup>4</sup>

5. The Panel also erred in its interpretation and application of Article XVII of the GATS when it relied on its erroneous likeness finding under Article II:1 to conclude that services and service suppliers located in Argentina are "like" those located in "non-cooperative" jurisdictions.<sup>5</sup> In addition to the fact that the Panel's findings under Article II:1 were themselves in error, the Panel's findings under Article II:1 were not sufficient to establish likeness under Article XVII of the GATS. Argentina therefore requests that the Appellate Body modify the Panel's reasoning while upholding its ultimate conclusion that measures 2, 3 and 4 are not inconsistent with Article XVII of the GATS.<sup>6</sup>

6. With respect to Panama's claims under both Article II:1 and Article XVII of the GATS, Argentina further considers that the Panel committed legal error by making a *prima facie* case of likeness for Panama in the absence of evidence and legal argument.

7. Alternatively, in the event that the Appellate Body were to find that Argentina bore the burden of proving likeness under Articles II:1 and XVII of the GATS, or that Panama had otherwise established a *prima facie* case of likeness, Argentina claims on appeal that the Panel failed to act consistently with its duties to conduct an objective assessment of the matter under Article 11 of

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\* This Notice, dated 2 November 2015, was circulated to Members as document WT/DS453/8.

<sup>1</sup> Panel Report, para. 7.186.

<sup>2</sup> Panel Report, paras. 7.153-7.185 and 7.365.

<sup>3</sup> Panel Report, paras. 7.185, 7.186, 7.365.

<sup>4</sup> Panel Report, paras. 7.171-7.185, but in particular para. 7.179.

<sup>5</sup> Panel Report, paras. 7.481-7.489.

<sup>6</sup> Panel Report, para. 7.525.

the DSU in reaching its findings under those provisions. The Panel ignored uncontested evidence on the panel record which demonstrated that the differences in regulatory frameworks between cooperative and non-cooperative jurisdictions affect the nature and extent of the competitive relationship among services and service suppliers located in these different types of jurisdictions, to the extent that they cannot be considered "like" under Articles II:1 and XVII of the GATS.<sup>7</sup> Should the Appellate Body sustain this alternative claim of error, Argentina requests that the Appellate Body complete the legal analysis and find, on the basis of the Panel's factual findings and uncontested evidence on the panel record, that these categories of services and service suppliers are not like under Articles II:1 and XVII of the GATS.

8. For these reasons, Argentina respectfully requests that the Appellate Body reverse the Panel's finding that services and service suppliers located in "non-cooperative" jurisdictions are "like" services and service suppliers located in "cooperative" jurisdictions and in Argentina under Articles II:1 and XVII of the GATS, respectively.<sup>8</sup> Consequently, Argentina respectfully requests that the Appellate Body (1) reverse the Panel's ultimate finding that the measures at issue in this dispute are inconsistent with Article II:1 of the GATS<sup>9</sup>; and (2) modify the basis for the Panel's ultimate finding that measures 2, 3, and 4 are not inconsistent with Article XVII.<sup>10</sup>

9. Pursuant to Rule 23(3) of the Working Procedures, Argentina files this Notice of Other Appeal together with its Other Appellant's Submission with the Appellate Body Secretariat.

10. Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures, this Notice of Other Appeal provides an indicative list of the paragraphs of the Panel Report containing the alleged errors of law and legal interpretation by the Panel, without prejudice to Argentina's ability to rely on other paragraphs of the Panel Report in its other appeal.

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<sup>7</sup> See e.g., Panel Report, paras. 7.509-7.521.

<sup>8</sup> Panel Report, paras. 7.185, 7.186, 7.365, 7.488 and 7.489.

<sup>9</sup> Panel Report, paras. 7.367 and 8.2.b.

<sup>10</sup> Panel Report, paras 7.523-7.525 and 8.2.c.





**ANNEX B**

ARGUMENTS OF THE PARTICIPANTS

<b>Contents</b>		<b>Page</b>
Annex B-1	Executive summary of Panama's appellant's submission	B-2
Annex B-2	Executive summary of Argentina's other appellant's submission	B-4
Annex B-3	Executive summary of Argentina's appellee's submission	B-7
Annex B-4	Executive summary of Panama's appellee's submission	B-10

**ANNEX B-1****EXECUTIVE SUMMARY OF PANAMA'S APPELLANT'S SUBMISSION<sup>1</sup>****1.1 The Panel erred in the interpretation and application of the term "treatment no less favourable" in Articles II:1 and XVII of the GATS**

1.1. In resolving Panama's claims under Article II:1 of the GATS, the Panel reached the "preliminary conclusion" that all of the measures at issue accord less favourable treatment to services and service suppliers of non-cooperative countries in comparison with that accorded to like services and service suppliers of cooperative countries.<sup>2</sup> Similarly, in resolving Panama's claims under Article XVII of the GATS, the Panel decided "on a preliminary basis" that measures 2, 3 and, 4 accord less favourable treatment to services and service suppliers of non-cooperative countries in comparison with that accorded to like Argentine services and service suppliers.<sup>3</sup>

1.2. Based on previous Appellate Body jurisprudence, these findings should have sufficed to establish that: (i) measures 1, 2, 3, 4, 5, 6, 7, and 8 are inconsistent with Article II:1 of the GATS; and (ii) measures 2, 3, and 4 are inconsistent with Article XVII of the GATS, as claimed by Panama in its panel request.

1.3. However, the Panel went further and asserted that in analyzing "no less favourable treatment" under Articles II:1 and XVII of the GATS respectively, the regulatory framework in which service suppliers operate is a relevant factor that may be taken into account.<sup>4</sup>

1.4. Under the Panel's interpretation, the regulatory framework – in this case, access (or lack thereof) to information by Argentine authorities – gives services and service suppliers of non-cooperative countries a competitive advantage over like Argentine services and service suppliers (and over like services and service suppliers of cooperative countries). In the Panel's view, this advantage modifies the conditions of competition. Thus, according to the Panel, a Member that imposes discriminatory measures to neutralize this perceived advantage is not acting in a manner inconsistent with the obligation to provide "treatment no less favourable". Instead, that Member does not modify the conditions of competition *in favour of* Argentine like services and service suppliers (and by extension, like services and service suppliers of cooperative countries.)

1.5. The Panel's interpretation is legally incorrect.

1.6. Consistently with previous jurisprudence, Panama starts with the premise that the "treatment no less favourable" obligations in Articles II:1 and XVII of the GATS are meant to "ensure equality of conditions of competition": (i) between services and service suppliers of a Member and the like services and service suppliers of other Members; and (ii) between domestic services and service suppliers and like services and service suppliers of all other Members, respectively.

1.7. In Panama's view, "ensuring equality of conditions of competition" means that measures that are regulated under Articles II:1 and Article XVII of the GATS must not alter the opportunities of like services and service suppliers of different origins to compete in a given market. In this context, the measures must be neutral in their application with respect to the pre-existing relative competitiveness between like services and service suppliers of different origins.

1.8. The Panel appears to interpret "ensuring equality of conditions of competition" in a different manner. Panama's understanding of the Panel's interpretation is that Argentina's rights and obligations under Articles II:1 and XVII of the GATS are to: (i) assess the relative competitiveness of like services and service suppliers; (ii) identify any disadvantages of services and service

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<sup>1</sup> This executive summary contains a total of 1,169 words. The remainder of this submission (excluding the executive summary) contains a total of 38,999 words.

<sup>2</sup> Panel Report, paras. 7.282, 7.300, 7.308, 7.318, 7.328, 7.338, 7.350 and 7.359.

<sup>3</sup> Panel Report, paras. 7.501, 7.502 and 7.503.

<sup>4</sup> Panel Report, paras. 7.212, 7.235, 7.493, and 7.494.

suppliers of cooperative countries and of Argentine origin based on whether Argentine authorities have access to information; and (iii) impose a discriminatory measure that compensates for the perceived disadvantages and, in so doing, "equalizes" the conditions of competition.

1.9. Under the Panel's interpretation, therefore, Articles II:1 and XVII of the GATS do not limit Members to apply measures with a neutral impact on all like services and service suppliers. In addition, a Member may assess the respective regulatory framework applicable to like services and service suppliers, identify the relative disadvantages arising from differences in the regulatory framework, and impose a measure that compensates for those disadvantages.

1.10. The Panel's interpretation deviated from established jurisprudence and set a new legal standard that has no basis in the text or context of Articles II:1 and XVII of the GATS, or in the object and purpose of the GATS.

### **1.2 The Panel erred in finding that measures 1, 2, 3, 4, 7, and 8 are provisionally justified under Article XIV(c) of the GATS**

1.11. The Panel erred in its interpretation and application of Article XIV(c) of the GATS to the assessment of measures 1, 2, 3, 4, 7, and 8. The Panel conducted its analysis on the basis of criteria that have been previously rejected by the Appellate Body and panels. The Panel did not focus on the differences in treatment between services and service suppliers of cooperative and non-cooperative jurisdictions, i.e. the aspects of the measures that gave rise to the inconsistencies with Article II:1 of the GATS.

1.12. Furthermore, the Panel did not carry out its assessment under Article XIV(c) of the GATS on the basis of the contribution of the measures to the objective of securing compliance with specific Argentine laws and regulations. The Panel relied on unsubstantiated assumptions and incomplete reasoning not supported by the evidence with respect to the contribution of the measures to the ends pursued and the assessment of their restrictiveness in international trade in services.

1.13. Thus, Panama considers that the Panel improperly found that measures 1, 2, 3, 4, 7, and 8 are provisionally justified under Article XIV(c) of the GATS.

### **1.3 The Panel erred in rendering meaningless the term "domestic regulation" in paragraph 2(a) of the GATS Annex on Financial Services**

1.14. Argentina claimed that measures 5 and 6 were justified by paragraph 2(a) of the GATS Annex on Financial Services (the prudential exception<sup>5</sup>). The Panel was called upon to interpret the prudential exception and to determine whether Argentina had met its burden of establishing that the challenged measures were justified under that provision.

1.15. In Panama's view, the Panel failed, as treaty interpreter, to give meaning and effect to all the terms of the provision under examination. In particular, the Panel rendered the reference to "domestic regulation" in the heading of the prudential exception meaningless. Panama suggested ways to interpret this term. However, the Panel rejected Panama's suggestions and ultimately concluded that the prudential exception covers *all* types of measures affecting the supply of financial services, not merely "domestic regulations". Panama appeals this interpretation and requests the Appellate Body to reverse the Panel's findings with respect to the prudential exception.

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<sup>5</sup> Panama notes that the literature normally uses the terms "financial carve-out" or "prudential carve-out" to refer to the exception in paragraph 2(a) of the Annex on Financial Services. For ease of reference, Panama uses the term employed by the Panel and refers to the "prudential exception" in this submission. However, the Appellate Body may wish to use one of the more commonly-used terms.

**ANNEX B-2****EXECUTIVE SUMMARY OF ARGENTINA'S OTHER APPELLANT'S SUBMISSION****I. INTRODUCTION**

1. This dispute concerns measures that Argentina has adopted to preserve the integrity of its national tax system and to combat financial crimes such as money laundering and tax evasion. The types of measures at issue in this dispute have been recognized by the Organization for Economic Cooperation and Development (OECD), the G-20, and other multilateral organizations as essential tools for enforcing domestic tax laws, preventing the erosion of domestic tax bases, ensuring the integrity and stability of the global financial system, and achieving a level competitive playing field in the international market for financial and other related services.

2. The measures at issue in this dispute are concerned with Argentina's inability to obtain tax-related information from service suppliers located in jurisdictions that do not adhere to international standards of transparency and effective information exchange in tax-related matters. These types of measures are commonly referred to as "defensive tax measures". The eight specific measures challenged by Panama establish various presumptions, tax determination methodologies, registration requirements, and other provisions of law designed to address the risks associated with transactions that involve service suppliers located in jurisdictions that do not engage in effective information exchange with Argentina.<sup>1</sup>

3. The eight defensive tax measures at issue in this dispute all refer to Decree No. 589/2013. Decree No. 589/2013 establishes two distinct bases upon which Argentina will designate a jurisdiction as cooperative. The first basis upon which Argentina will designate a jurisdiction as cooperative is if that jurisdiction has entered into a tax information exchange agreement with Argentina, or a convention on the avoidance of double taxation that includes a broad information exchange clause, provided in either case that the agreement results in effective information exchange. The second basis upon which Argentina will designate a jurisdiction as cooperative is if that jurisdiction has entered into negotiations with Argentina toward the conclusion of either type of agreement. A non-cooperative jurisdiction is a jurisdiction that does not satisfy either of the two bases for designation as cooperative.

4. Panama's core allegation in this dispute is that the differential treatment accorded under the measures at issue to services and service suppliers located in non-cooperative jurisdictions violates the obligations of most-favoured nation and national treatment under Articles II:1 and XVII of the General Agreement on Trade in Services (GATS), respectively. In its other appeal, Argentina seeks review of the Panel's finding that services and service suppliers located in Argentina and in jurisdictions that Argentina designates as cooperative are "like" those located in jurisdictions designated as non-cooperative.

**II. THE PANEL ERRED IN FINDING THAT SERVICES AND SERVICE SUPPLIERS LOCATED IN "COOPERATIVE" AND "NON-COOPERATIVE" JURISDICTIONS ARE "LIKE" UNDER ARTICLE II:1 OF THE GATS**

5. The Panel erred in finding that the services and service suppliers at issue in this dispute are "like" under Article II:1 of the GATS because Panama demonstrated that the measures at issue provide differential treatment "by reason of origin".<sup>2</sup> This finding is in error for the following two reasons.

6. First, as a matter of law, the fact that a measure provides differential treatment on the basis of the origin of a service or service supplier is not a basis for presuming "likeness". The "origin-based" presumption that arose under the multilateral agreements on trade in goods reflects the fact that these agreements refer only to "like products" (and not like *producers*), combined with the fact that the origin of a product does not ordinarily affect its characteristics as a product.

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<sup>1</sup> Panel Report, Section 2.3.

<sup>2</sup> Panel Report, para. 7.365.

7. Whereas the characteristics of goods are usually intrinsic to the good itself, the characteristics of services are frequently inseparable from a characteristic of the service supplier. For this reason, Article II:1 uses the conjunctive "and" to refer to "like services *and* service suppliers". Any inquiry into "likeness" under Article II:1 must therefore proceed on a cumulative basis, taking into account, as appropriate, the relevant characteristics of the service as well as the relevant characteristics of the service supplier.

8. Within this framework, and unlike the case of trade in goods, the origin of a service or service supplier may be highly relevant to its characteristics. A service or service supplier from a particular jurisdiction may have certain characteristics as a service or service supplier *precisely because* of its origin, as a result of the regulatory framework within which the service supplier operates. Differences in the regulatory framework prevailing within a service supplier's country of origin may affect the nature of the service that it provides and the manner in which it supplies that service. These considerations, in turn, may affect the competitive relationships among services and service suppliers in the marketplace.

9. For these reasons, the fact that a measure provides differential treatment "on the basis of origin" does not provide a basis for presuming the likeness of the services and service suppliers at issue. Even if the "origin-based" presumption developed in the context of trade in goods were applicable in a GATS context, the Panel erred in finding "likeness" in the absence of a finding that the measures provided differential treatment *exclusively* on the basis of origin, as argued by Panama. On the contrary, the Panel found that the measures at issue provide differential treatment based on differences in regulatory frameworks in cooperative and non-cooperative jurisdictions.

10. Second, the Panel erred in reversing the burden of proof under Article II:1 of the GATS. Despite Panama's failure to establish a *prima facie* case that Argentina's measures provided differential treatment "exclusively" on the basis of origin, and the Panel's recognition that Argentina's ability to access tax information from service suppliers is relevant to an evaluation of likeness in this case, the Panel erroneously concluded that it was incumbent upon *Argentina* to prove that this "other factor" affects the competitive relationship between services and service suppliers. This constitutes a separate and independent reason why the Appellate Body must reverse the Panel's conclusion that the measures at issue are inconsistent with Article II:1 of the GATS.

### **III. THE PANEL ERRED IN FINDING THAT SERVICES AND SERVICE SUPPLIERS IN ARGENTINA ARE "LIKE" SERVICES AND SERVICE SUPPLIERS LOCATED IN "NON-COOPERATIVE" JURISDICTIONS UNDER ARTICLE XVII OF THE GATS**

11. The Panel also committed legal error when it relied on its erroneous likeness finding under Article II:1 to conclude that services and service suppliers *in Argentina* were "like" services and service suppliers located in jurisdictions designated as "non-cooperative". The Panel's likeness finding under Article II:1 was entirely inapposite to the analysis that it was required to undertake in the context of Article XVII. Consistent with the burden of proof, Panama was required to establish a *prima facie* case that services and service suppliers of Argentine origin are "like" services and service suppliers located in jurisdictions that Argentina designates as non-cooperative. The Panel's prior findings under Article II:1, whatever their other shortcomings, simply were not relevant to its analysis of whether Panama had discharged this burden.

### **IV. ALTERNATIVELY, THE PANEL ACTED INCONSISTENTLY WITH ARTICLE 11 OF THE DSU IN FINDING THAT THE SERVICES AND SERVICE SUPPLIERS AT ISSUE ARE "LIKE" UNDER ARTICLES II AND XVII OF THE GATS**

12. Alternatively, in the event that the Appellate Body were to find that Argentina bore the burden of proving likeness under Articles II:1 and XVII of the GATS, or that Panama had otherwise established a *prima facie* case of likeness, Argentina claims on appeal that the Panel failed to act consistently with its duties to conduct an objective assessment of the matter under Article 11 of the DSU in reaching its findings under those provisions. The Panel ignored uncontested evidence on the panel record which demonstrated that the differences in regulatory frameworks between cooperative and non-cooperative jurisdictions affect the nature and extent of the competitive

relationship among services and service suppliers located in these different types of jurisdictions, to the extent that they cannot be considered "like" under Articles II:1 and XVII of the GATS.

13. Should the Appellate Body sustain this alternative claim of error, Argentina requests that the Appellate Body complete the legal analysis and find, on the basis of the Panel's factual findings and uncontested evidence on the panel record, that these categories of services and service suppliers are not like under Articles II:1 and XVII of the GATS.

#### **V. REQUEST FOR FINDINGS**

14. For these reasons, Argentina respectfully requests that the Appellate Body reverse the Panel's finding that services and service suppliers located in "non-cooperative" jurisdictions are "like" services and service suppliers located in "cooperative" jurisdictions and in Argentina under Articles II:1 and XVII of the GATS, respectively.<sup>3</sup> Consequently, Argentina respectfully requests that the Appellate Body (1) reverse the Panel's ultimate finding that the measures at issue in this dispute are inconsistent with Article II:1 of the GATS<sup>4</sup>; and (2) modify the basis for the Panel's ultimate finding that measures 2, 3, and 4 are not inconsistent with Article XVII.<sup>5</sup>

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<sup>3</sup> Panel Report, paras. 7.185-7.186, 7.365, 7.488 and 7.489.

<sup>4</sup> Panel Report, paras. 7.367 and 8.2.b.

<sup>5</sup> Panel Report, paras. 7.523-7.525 and 8.2.c.

## ANNEX B-3

### EXECUTIVE SUMMARY OF ARGENTINA'S APPELLEE'S SUBMISSION

#### 1 INTRODUCTION

1.1. On 27 October 2015, Panama appealed certain issues of law and legal interpretation contained in the report of the Panel in *Argentina – Measures Relating to Trade in Goods and Services*. In this submission, Argentina responds to the arguments raised by Panama on appeal on an *arguendo* basis. This is because, as explained in Argentina's other appellant's submission, Argentina believes that the Panel erred in finding that the services and service suppliers at issue in this dispute are "like" within the meaning of Articles II:1 and XVII of the GATS. Should the Appellate Body reverse the Panel's likeness finding, it will not be necessary for it to address any of the claims raised by Panama on appeal. However, in the event that the Appellate Body upholds the Panel's finding that the services and service suppliers at issue are "like", Argentina respectfully requests that the Appellate Body reject Panama's claims of error in relation to the Panel's analysis of Article XIV(c) of the GATS and the prudential carve-out.

#### 2 PANAMA'S CLAIMS OF ERROR CONCERNING THE PANEL'S INTERPRETATION OF THE PHRASE "TREATMENT NO LESS FAVOURABLE" IN ARTICLES II AND XVII SHOULD BE RESOLVED ON THE GROUNDS OF LIKENESS

2.1. Panama appeals the Panel's interpretation of the phrase "treatment no less favourable" in Articles II and XVII of the GATS and, in particular, the Panel's conclusion that the concept of "less favourable treatment" permits a panel to take into account "regulatory aspects relating to services and service suppliers that may affect the conditions of competition".

2.2. Argentina believes that the Panel did not err in its conclusions concerning the importance of regulatory distinctions to a proper interpretation of Articles II and XVII of the GATS. However, for the reasons that Argentina set forth in its other appeal, Argentina considers that regulatory differences that affect competitive relationships among services and service suppliers are properly examined, in the first instance, as part of the evaluation of whether the services and service suppliers at issue may be considered "like". Notably, in its appellant submission, Panama *agrees* with Argentina that the ability or inability of a Member to obtain tax-related information from foreign service suppliers is a "likeness-related consideration"<sup>1</sup> that the Panel should have examined under the heading of likeness. Had the Panel held Panama to its burden of proof in this respect, the Panel would properly have concluded that Panama had failed to establish a *prima facie* case of likeness.

2.3. Panama's failure to establish a *prima facie* case of likeness should have led the Panel to reject Panama's claims under Articles II and XVII without proceeding to an examination of whether the measures at issue provide "less favourable treatment". Argentina respectfully submits that the Appellate Body should resolve the present appeals on that basis.

#### 3 THE PANEL DID NOT ERR IN FINDING THAT THE MEASURES AT ISSUE ARE PROVISIONALLY JUSTIFIED UNDER ARTICLE XIV(C) OF THE GATS

3.1. Panama appeals the Panel's finding that measures 1, 2, 3, 4, 7 and 8 are provisionally justified under Article XIV(c) of the GATS. Panama contends that the Panel erred in concluding that the measures are "designed" to secure compliance with Argentina's tax and anti-money laundering laws and regulations, and that they are "necessary" to secure such compliance.

3.2. In relation to whether the measures are "designed" to secure compliance with Argentina's tax and anti-money laundering laws and regulations, Panama argues that the Panel erred for three reasons.

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<sup>1</sup> Panama's appellant's submission, para. 3.44.

3.3. First, Panama maintains that the Panel failed to examine the aspects of the measures that gave rise to a finding of inconsistency under Article II:1 of the GATS. Contrary to what Panama suggests, it is patently evident from the Panel's analysis that it focused on the additional information requirements and more onerous tax and inspection burdens that apply exclusively to transactions with service suppliers of non-cooperative jurisdictions under the measures in determining whether these measures are designed to secure compliance with Argentina's laws and regulations. Accordingly, the Panel correctly focused on the aspects of the measures that gave rise to a finding of inconsistency under Article II:1 of the GATS.

3.4. Second, Panama argues that the Panel incorrectly evaluated whether measures 1, 2, 3, 4, and 7 are designed to attain the objectives of Argentina's laws and regulations, rather than securing compliance with specific provisions of such laws and regulations. Contrary to Panama's argument, the Panel did not find that measures 1 to 4 and 7 attain the "general" tax collection objectives of Argentina's measures. Rather, after carefully examining the normative content of each of the measures with which those measures secure compliance, the Panel found that measures 1 to 4 and 7 secure compliance with the specific obligations contained in Articles 1 and 5 of the Income Tax Law, Article 46 of the LPT, Article 1 of the CTL, Article 16 of the National Constitution, Article 118.3 of the LSC and Article 188 of IGJ Resolution No. 7/2005.

3.5. Third, and finally, Panama argues that the Panel lacked legal basis or evidentiary support for its conclusion that transactions with non-cooperative jurisdictions raise compliance concerns. Contrary to Panama's argument, however, the Panel did not assume that transactions between related parties *per se* violate Argentina's tax laws or otherwise raise compliance concerns. Instead, the Panel's finding that measures 1 to 4 are designed to secure compliance with Argentina's tax laws is based on extensive evidence on the panel record indicating that transactions between Argentine taxpayers and service suppliers located in *non-cooperative jurisdictions* pose a particular risk to the enforcement of Argentina's tax laws.

3.6. Panama further argues that the Panel erred in finding that measure 8 is designed to secure compliance with Law 25,246 because the Panel focused on information and reporting requirements that do not form part of measure 8. Instead, the Panel expressly relied on the due diligence powers of the Central Bank under measure 8 in concluding that the "closer scrutiny" of transfers to non-cooperative jurisdictions to ensure that the operations concerned are of genuine origin secures compliance with Law 25,246.

3.7. For the foregoing reasons, the Panel did not err in finding that measures 1, 2, 3, 4, 7 and 8 are designed to secure compliance with Argentina's laws and regulations within the meaning of Article XIV(c) of the GATS.

3.8. Panama's appeal of the Panel's "necessity" analysis relates exclusively to the "contribution" and "trade-restrictiveness" factors. In Argentina's view, Panama's appeal relates to the Panel's assessment of the evidence and arguments before it, and not to the Panel's application of Article XIV(c) to the facts before it. As such, Panama should have brought its claims under Article 11 of the DSU, and its failure to do so provides a separate and independent basis for the Appellate Body to dismiss the entirety of Panama's claims at the threshold.

3.9. In the unlikely event that the Appellate Body were to consider that Panama's claims of error constitute legal characterization claims, Argentina considers that Panama has failed to establish that the Panel committed legal error in concluding that the measures contribute to securing compliance with Argentina's laws and regulations and have only "limited restrictive effect on international trade in services".

3.10. Consistent with the Appellate Body's guidance in *Brazil – Retreaded Tyres*, the Panel found that each of the measures contributed, *individually*, to secure compliance with Argentina's laws and regulations. The Panel then found that these measures, operating *collectively* in the context of a comprehensive policy to combat harmful tax practices, have a combined effect that is greater than the sum of each measure taken individually. As such, these measures operate synergistically



so that their collective effect, as the Panel found, is greater than the sum of the individual components.<sup>2</sup>

3.11. In relation to trade restrictiveness, the Panel did not fail to take into account that the measures at issue may apply to transactions that serve a legitimate business purpose. The Panel took this argument of Panama into account, but was ultimately not persuaded by it. Moreover, Panama is incorrect that the Panel did not have a sufficient evidentiary basis or did not properly explain its finding that the measures at issue had only a "limited" restrictive effect on international trade in services. To the contrary, the Panel provides a reasoned and adequate explanation for those findings, in relation to each of the measures at issue.

3.12. For the reasons outlined above, the Panel did not err in finding that measures 1, 2, 3, 4, 7 and 8 are provisionally justified under Article XIV(c) of the GATS because they are necessary to secure compliance with Argentina's laws and regulations. Accordingly, Argentina respectfully requests that the Appellate Body uphold the Panel's findings in paragraph 7.740 of the Panel Report.

#### **4 THE PANEL DID NOT ERR IN ITS INTERPRETATION OF THE PRUDENTIAL CARVE-OUT**

4.1. On appeal, Panama claims that the Panel erred in its interpretation of the prudential carve-out by finding that the prudential carve-out applies to all measures affecting the supply of financial services. Panama argues that the Panel failed to give meaning to the reference to "domestic regulations" in the title of the prudential carve-out, which in Panama's view exhaustively defines the types of measures that are subject to justification under that provision.

4.2. At the same time, Panama now seems prepared to accept that "all measures of general application affecting trade in services" are covered by the prudential carve-out.<sup>3</sup> In light of Panama's concession, one has to wonder about the practical effect of its appeal, because Panama does not seem to take the position that measures 5 and 6 are *not* measures of the kind that the Panama now admits would qualify as domestic regulations under Article VI.

4.3. In any event, Panama's claim of error hinges on the proposition that the title of the prudential carve-out exhaustively defines the types of measures that fall within its purview, while the actual text of the provision defines only the types of violations that may be subject to justification. This proposition, of course, is untenable. In establishing that a Member "shall not be prevented from taking measures for prudential reasons", the drafters of the GATS established no limitation on the types of measures covered by the exception other than the prudential rationale that leads to their adoption. As the Panel correctly noted, Panama's interpretation would read the terms "notwithstanding any other provisions of the Agreement", and "where such measures do not conform with the provisions of the Agreement" out of the text of the prudential carve-out.

4.4. Accordingly, Argentina respectfully requests that the Appellate Body uphold the Panel's finding in paragraph 7.847 of the Panel Report that the prudential carve-out covers all types of measures affecting the supply of financial services under paragraph 1(a) of the Annex on Financial Services of the GATS.

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<sup>2</sup> Panel Report, para. 7.706-7.712; 7.714-7.717.

<sup>3</sup> Panama's appellant's submission, para. 6.19.

## ANNEX B-4

### EXECUTIVE SUMMARY OF PANAMA'S APPELLEE'S SUBMISSION

1.1. Panama considers that the Panel correctly concluded that the services and service suppliers at issue are "like" within the meaning of Articles II:1 and XVII of the GATS. In particular, Panama is of the view that, where measures distinguish on their face on the basis of the origin of goods, services, or service suppliers, "likeness" shall be established. In this dispute, the Panel should have ended its determination once it found that the measures accord different treatment "by reason of origin".

1.2. In any event, the regulatory framework in which services and service suppliers operate is not relevant to determine the competitive relationship between services and service suppliers and their "likeness" *inter se*. Even assuming *arguendo* that the regulatory framework may be relevant, the Panel correctly found that Argentina had to prove that such regulatory framework affects "likeness". It is a general principle of evidence that the party that alleges a fact bears the burden of proving it. In this case, as Argentina argued that the regulatory framework plays a role in the determination of "likeness", it bore the burden of proving that fact. A complainant in a WTO dispute cannot bear the burden of identifying the regulatory concerns of the respondent.

1.3. Furthermore, Argentina has not demonstrated that the Panel acted inconsistently with Article 11 of the DSU. There are no reasons to submit that the Panel did not take into account the evidence adduced by Argentina. The Panel exercised its discretion as the trier of facts and determined, based on what it considered as the relevant facts, that Argentina had not demonstrated the existence of "likeness". Indeed, the evidence presented by Argentina shows that the services and service suppliers at issue are "like".

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**ANNEX C**

## ARGUMENTS OF THE THIRD PARTICIPANTS

<b>Contents</b>		<b>Page</b>
Annex C-1	Executive summary of Australia's third participant's submission	C-2
Annex C-2	Executive summary of Brazil's third participant's submission	C-3
Annex C-3	Executive summary of the European Union's third participant's submission	C-4
Annex C-4	Executive summary of Guatemala's third participant's submission	C-6
Annex C-5	Executive summary of the United States' third participant's submission	C-7

## **ANNEX C-1**

### **EXECUTIVE SUMMARY OF AUSTRALIA'S THIRD PARTICIPANT'S SUBMISSION**

#### **Paragraph 2 of the Annex on Financial Services**

1. Australia's view is that the scope of the prudential exception in paragraph 2(a) of the Annex on Financial Services should be interpreted broadly. The text of paragraph 2(a) is silent on any limitation, which leads to the presumption that no limitation exists.
2. Australia agrees with the Panel's analysis that the words of the text indicate that the scope of application is the entirety of the GATS, subject to falling within the meaning of financial services in paragraph 1(a) of the Annex on Financial Services.
3. In addition, Australia argues that the heading 'domestic regulation' provides context, but can be given meaning without limiting the scope of the prudential exception.
4. Furthermore, the technique of cross-referencing in other parts of the GATS suggests that the drafters did not wish to limit the scope of the prudential exception.
5. The objects and purposes of the GATS, in emphasising economic growth as the purpose of the liberalisation of trade in services and recognising the right of members to make regulations, also support a broad interpretation.
6. This interpretation is also supported by subsequent practice.

## ANNEX C-2

### EXECUTIVE SUMMARY OF BRAZIL'S THIRD PARTICIPANT'S SUBMISSION

1. In its Third Party Submission, Brazil raises four main points regarding the present dispute. First, Brazil reaffirms the importance of international financial regulation for the stability of the financial system and the security of economies worldwide. The prevention of deceptive practices, therefore, remains crucial in the global efforts towards promoting stability of the international financial system.
2. Second, Brazil emphasizes that the guiding principle of the "likeness" analysis in the GATS is the protection of competitive relationships between domestic and foreign services and service providers, which is to be assessed on a case-by-case basis. For that, in the consideration of "likeness" of services and service providers, the assessment must take into account the particularities of this sector, as well as the regulatory framework and international commitments of the country where the service provider is located.
3. Third, Brazil understands that in GATS the regulatory aspects pertain to the likeness, but not to the "treatment less favourable" analysis. Contrary to the "likeness" criterion, the consideration of regulatory aspects in the "treatment less favourable" could potentially undermine the exceptions laid out in Article XIV of the GATS.
4. Finally, paragraph 2(a) of the Annex of Financial Services gives Members significant leeway for the adoption of measures for prudential reasons to maintain the stability of that Member's financial market. Accordingly, Brazil understands that domestic regulations may affect either foreign or domestic services or both, as long as they are adopted with a view to organizing and regulating the domestic market of services.

**ANNEX C-3****EXECUTIVE SUMMARY OF THE EUROPEAN UNION'S THIRD PARTICIPANT'S SUBMISSION****A. Like services and service suppliers**

1. The first of four issues in this appeal concerns the interpretation of the concept of "likeness" in Articles II and XVII of the GATS. The European Union considers that it is appropriate to conclude that, if the distinction in a measure is exclusively based on origin, "likeness" can automatically be established and there is no need to further assess likeness criteria. Indeed, when a measure provides explicitly, or by necessary implication, for different regulatory treatment based on origin, there is a *de jure* distinction which is based on origin.

2. In case the measure itself draws up a list of countries that benefit from a certain "more favourable treatment", it cannot be disputed that the measure is based on origin explicitly. The European Union considers that the Panel did examine whether the regulatory distinction was exclusively based on origin and made a finding. Had the Panel found that the distinction in Decree No. 589/2013 was *not* exclusively based on origin, it would have had to assess whether the fact that a service was provided by a supplier from a country that is labelled as "non-cooperative" (which depends on the regulatory framework applicable in the home country) was reflected in the competitive relationship in the marketplace between the allegedly like services and suppliers. In particular, if consumers considered that this fact meant that they are not in a competitive relationship, the services and suppliers would not be "like".

3. In respect of the distribution of the burden of proof to show "likeness", the European Union considers that Panama was obliged to establish a *prima facie* case of "likeness". Once this proof is made, it is for the responding party to rebut these showings as it is more familiar with its own regulatory framework.

**B. Treatment no less favourable**

4. The second issue concerns the interpretation of the term "less favourable treatment" in Articles II and XVII of the GATS. With respect to the context of the term "treatment no less favourable" the European Union considers that the Panel's heavy reliance on the reference to "service suppliers" in the GATS and the distinction the Panel drew with Articles I and III:4 of the GATT 1994 would seem to be exaggerated. A close connection also exists between products and producers. However, the consideration of the connection between services and suppliers is most appropriately done in case of the determination of "likeness".

5. The European Union objects to the test that the regulatory framework in which suppliers operate may be taken into account when determining whether a measure provides "less favourable treatment" provided that these aspects affect the conditions of competition. Such a test is too short and pays insufficient attention to the reasons for neutralising a competitive advantage and thus to the objectives of the regulatory distinction. The European Union considers it inappropriate to develop a test under Articles II:1 and XVII of the GATS that would accept the neutralisation of a competitive advantage without even looking at the objectives of such neutralisation. In any event, a panel should do more than merely establish that the conditions of competition are modified. It must establish a genuine relationship between the measure and the detrimental impact on services or suppliers of a certain origin.

**C. The exception in Article XIV(c) of the GATS**

6. With respect to the interpretation of Article XIV(c) of the GATS, the European Union notes that what should be analysed under sub-paragraph (c) is whether the aspects of the measures that have given rise to the findings of inconsistency with an obligation in the GATS meet the requirements of that sub-paragraph.

7. The European Union considers that the existing exceptions in Article XIV of the GATS should be read in an evolutionary and non-restrictive manner, on the basis of customary rules for interpretation of international agreements, while accommodating for developments in societal concerns and for policy objectives that the negotiating parties of the GATT 1994 or the GATS may not have been aware of at the time. Such an approach was confirmed already by the Appellate Body in *US – Shrimp*.

8. At the same time, the European Union notes that sub-paragraph (c) should not be interpreted such as to enable circumvention of conditions attached to the exceptions in the GATS. When relying on Article XIV(c), the responding Member needs to (i) identify the laws and regulations with which the challenged measure is intended to secure compliance; (ii) prove that those laws and regulations are not in themselves inconsistent with WTO law; and (iii) provide that the measure challenged is designed to secure compliance with those laws or regulations. Furthermore, the responding Member must also show that the measure is "necessary" under Article XIV(c), demonstrating that there are no less trade restrictive alternative measures reasonably available, which make an equivalent contribution to the objective pursued. Finally, the responding Member must demonstrate that the measure meets the conditions of the chapeau of Article XIV(c) of the GATS.

9. The European Union agrees that a "coincidence between the objectives of the relevant measures and its enforcement mechanisms" is not "dispositive" for finding that the conditions of Article XIV(c) are met. What a responding Member must identify under Article XIV(c) of the GATS are the specific obligations with which the enforcement measures secure compliance.

#### **D. Scope of the "prudential exception"**

10. With respect to the scope of the prudential exception in Paragraph 2(a) of the GATS Annex on financial Services, the European Union disagrees with Panama's argument that measures that would fall within the scope of one of the six types of prohibited market access limitations, listed in Article XVI:2 of the GATS, could not be justified under the prudential exception because they would not be "domestic regulations". The European Union does not consider that there are certain violations of obligations in the GATS, particularly Article XVI, that could not be justified under the prudential exception. The prudential exception provides no limitation on the types of measures covered by its scope other than the prudential rationale that leads to their adoption.

#### ANNEX C-4

##### EXECUTIVE SUMMARY OF GUATEMALA'S THIRD PARTICIPANT'S SUBMISSION

1. Guatemala provides its views on certain legal arguments advanced by the Parties with respect to the concept of "likeness" of services and service suppliers and "treatment no less favourable" under Articles II:1 and XVII of the GATS.
2. Guatemala considers that any panel should conclude on the existence of likeness once it finds that a measure accords different treatment *exclusively by reason of origin*. In this case, there should be always a presumption of likeness unless proven otherwise.
3. In the view of Guatemala, a presumption of likeness can be rebutted only by taking into consideration *intrinsic characteristics* of the services or service suppliers.
4. In the context of "treatment no less favourable", regardless of whether having access to tax information on foreign suppliers as a matter of fact or a matter of law modifies the conditions of competition, the Panel's interpretation *expands* the limits of Articles XIV and XIV *bis* and introduces them in the context of "no less favourable treatment" analysis. This interpretation is unwarranted and highly problematic.
5. Guatemala is of the view that, as long as Members comply with their GATS obligations and commitments, they are free to pursue any objective they consider appropriate. However, only the objectives expressly envisaged by the exceptions of the GATS may justify violations of GATS obligations.



**ANNEX C-5****EXECUTIVE SUMMARY OF THE UNITED STATES' THIRD PARTICIPANT'S SUBMISSION**

1. The United States welcomes the opportunity to provide its views on certain issues raised in this dispute, in which Panama and Argentina each appeal certain findings by the Panel. The United States has a strong interest in the proper interpretation of the *General Agreement on Trade in Services* ("GATS") and, in particular, in the development of an effective and coherent approach to interpreting Article II and Article XVII, and to interpreting Paragraph 2(a) of the *Annex on Financial Services* to the GATS. The issues presented in these appeals are issues with systemic importance to Members, including issues that touch on Members' ability to regulate services to fulfill public policy objectives.
  2. Articles II and XVII both discipline a Member's treatment of the services and service suppliers of other Members, requiring that it be no less favorable than the treatment accorded to like services and service suppliers of any other Member (in the case of Article II) or to the like services and service suppliers of the Member itself (in the case of Article XVII). Application of these disciplines accordingly requires a comparison, with the treatment of one Member's services and service suppliers serving as the benchmark for treatment of another's like services and services. Likeness is obviously critical to the validity – if two things subject to comparison are dissimilar, then differences in their treatment may arise from the dissimilarities, rather than some sort of discrimination between them based on origin. Under the comparable most favored nation and national treatment disciplines in Articles I and III, respectively, of GATT 1947 and GATT 1994, panels developed a number of factors to determine whether products were sufficiently like for this comparison – physical characteristics, end uses, customer perceptions, as well as any additional relevant factors. In the services context, this inquiry would involve consideration of the nature of the services and the types of services suppliers.
  3. The findings of the Panel and the arguments of the participants in this appeal present several concerns with regard to the conduct of these comparisons under the GATS, involving the identification of like services and service suppliers, as well as the comparison of the treatment accorded to services and service suppliers of another Member.
  4. Under GATT 1947 and GATT 1994, Panels developed a principle that in limited circumstances, when national origin was the sole basis for treatment of imported products, a panel may assume that they were like domestic products without conducting a more detailed analysis. The Panel in this proceeding correctly rejected Panama's argument that this principle meant that treatment triggered by the nationality of the supplier (in some modes of supply) allowed an assumption that services and service suppliers were like. However, the Panel erred in then basing its likeness analysis entirely on an inquiry into whether there were factors other than nationality that determined Argentina's treatment of services and services suppliers. A proper analysis would have addressed the nature and characteristics of the services and service suppliers at issue, including any relevant regulatory characteristics, rather than the treatment of services and services not yet determined to be like.
  5. In the comparison of the treatment of the services and service suppliers in question, the Panel correctly recognized that it needed to take account of the regulatory context of the measures, but did so incorrectly. The Panel incorrectly viewed Panama's regulatory framework as a competitive advantage, and found that Argentina was entitled to apply tax measures to offset that advantage. However, the key finding was that Argentina's measures were aimed at protecting its ability to assess taxes based on accurate information. In this context, Panama's refusal to share tax information was a competitive disadvantage in its service suppliers' efforts to sell to Argentine customers who sought to obey the law. Footnote 10 to Article XVII specifies that Argentina bears no obligation to compensate for this disadvantage by allowing the use of unverifiable information provided by Panamanian suppliers.
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