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ANNEX A

NOTICES OF APPEAL AND OTHER APPEAL

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 partic(t)4 tre i7.c7.cccRepo.3(o)-1.8( )]TJ0 -1.2133 TD-.3009 Tc.(/R/A)-705,tr.(/R/A)-706(dd.)--.

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 he

ANNEX B

ARGUMENTS OF THE PARTICIPANTS

ANNEX B-1

EXECUTIVE SUMMARY OF PANAMA'S APPELLANT'S SUBMISSION[1]

1.1 The Panel erred in the interpretation and

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

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 sty 8(a).3()0(m)5.59AemeguAy Tj/TTl(u)-1(fCT)9.i(u)-1(1(n)a)1(n)c(s)5.ial 6(s)5.yERstendsu6(e)6

1.

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 rele

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

so that their collective effect, as the Panel found, is greater than the sum of the individual components.[2]

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

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 pruden

ANNEX C-2

EXECUTIVE SUMMARY OF BRAZIL'S THIRD PARTICIPANT'S SUBMISSION

1.

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

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

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