

ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS

Request for the Establishment of a Panel by the United States

The following communication, dated 6 December 2012, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On August 21, 2012, the United States requested consultations with the Government of Argentina ("Argentina") pursuant to, *inter alia*, Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article 6 of the *Agreement on Import Licensing Procedures* ("ILP Agreement") concerning certain measures imposed by Argentina on the importation of goods into Argentina. The United States held consultations with Argentina on September 20 and 21, 2012. Those consultations unfortunately did not resolve the dispute.

As a result, the United States respectfully requests that a panel be established to examine this matter pursuant to Article 6 of the DSU, Article XXIII:2 of the GATT 1994, and Article 6 of the ILP Agreement.

I. DECLARACION JURADA ANTICIPADA DE IMPORTACION REQUIREMENT

As of February 1, 2012,¹ Argentina has required importers to submit a *Declaración Jurada Anticipada de Importación* for all imports of goods into Argentina (the "DJAI Requirement").² Relevant legal instruments comprising this measure are listed in Annex I to this request.

This measure requires an importer, prior to the importation of goods, to submit an affidavit with certain information, which is processed by the *Administración Federal de Ingresos Públicos* ("AFIP") and then transmitted to participating governmental entities. These bodies may suspend approval of an importer's submission by placing an "observation" (*observaciones*) that serves as a hold on the submission in the DJAI electronic system. Until that hold is lifted, the DJAI will not be "validated" (*estado salida*) and the products cannot be imported. However, the conditions for approval of DJAIs are not stated in Argentine legal instruments, nor are they published or otherwise made available to other Members or traders. In addition, Argentina enforces the restrictive trade related requirements described below at Section III by, *inter alia*, withholding the issuance of DJAI approvals.

¹ The DJAI system was established on January 5, 2012 and the requirement was made effective as of February 1, 2012.

² There are certain narrow exceptions to the DJAI Requirement, including *inter alia* for samples, donations, and diplomatic and courier shipments.

The United States considers that, by adopting and maintaining the DJAI Requirement, Argentina has acted inconsistently with the following WTO provisions:

- Article X:1 of the GATT 1994, because Argentina has failed to publish promptly, in such a manner as to enable governments and traders to become acquainted with them, laws, regulations and administrative rulings of general application pertaining to the operation of the DJAI Requirement.
- Article X:3(a) of the GATT 1994, because the DJAI Requirement is not administered in a uniform, reasonable and impartial manner.
- Article XI:1 of the GATT 1994, because the DJAI Requirement prohibits or restricts the importation of goods.
- Article 1.3 of the ILP Agreement, because the rules for application of the DJAI Requirement are not neutral in application or administered in a fair and equitable manner.
- Article 1.4(a) of the ILP Agreement, because Argentina has not published the rules and all information concerning procedures for the submission of applications, in the sources notified to the Committee on Import Licensing, in such a manner as to enable governments and traders to become acquainted with them.
- Article 1.6 of the ILP Agreement, because application and renewal procedures for DJAIs are not as simple as possible and applicants can be required to approach more than three administrative bodies.
- Article 3.2 of the ILP Agreement, because the DJAI Requirement constitutes a non-automatic import licensing procedure and has trade-restrictive or -distortive effects on imports additional to those caused by the imposition of any restriction that the DJAI Requirement purports to implement; because the DJAI Requirement is broader in scope and duration than any measure it is used to implement; and because it is more administratively burdensome than absolutely necessary to administer any such measure.
- Article 3.3 of the ILP Agreement, because Argentina has not published sufficient information for other Members and traders to know the basis for granting and/or allocating licenses.
- Article 3.5(f) of the ILP Agreement, because the period for processing applications exceeds the maximum permitted by that provision.
- Articles 5.1, 5.2, 5.3, and 5.4 of the ILP Agreement, because Argentina has not notified the Committee on Import Licensing of the DJAI Requirement, or changes thereto, or the publication(s) in which the information required in paragraph 4 of Article 1 of the ILP Agreement will be published.

II. CERTIFICADO DE IMPORTACION REQUIREMENT

Argentina subjects the importation of certain goods into Argentina to a non-automatic import license requirement (*Licencias No Automáticas de Importación*) by requiring *Certificados de Importación* as a condition for the importation of goods (the “CI Requirement”). The CI Requirement currently covers nearly 600 tariff lines over 17 product groups. The legal instruments covering those product groups are set out in Annex II. However, the conditions for granting CIs are not stated in Argentine legal instruments, nor are they published or otherwise made available to other Members or traders. In addition, Argentina enforces the restrictive trade related requirements described below at Section III by, *inter alia*, withholding the issuance of CIs.

The United States considers that, when viewed as a single regime, or alternatively as 17 individual import licensing procedures, the CI Requirement is inconsistent with the following WTO provisions:

- Article X:1 of the GATT 1994, because Argentina has failed to publish promptly, in such a manner as to enable governments and traders to become acquainted with them, laws, regulations and administrative rulings of general application pertaining to the operation of the CI Requirement.
- Article X:3(a) of the GATT 1994, because the CI Requirement is not administered in a uniform, reasonable and impartial manner.
- Article XI:1 of the GATT 1994, because the CI Requirement prohibits or restricts the importation of goods.
- Article 1.3 of the ILP Agreement, because the rules for application of the CI Requirement are not neutral in application or administered in a fair and equitable manner.
- Article 1.4(a) of the ILP Agreement, because Argentina has not published the rules and all information concerning procedures for the submission of applications, in the sources notified to the Committee on Import Licensing, in such a manner as to enable governments and traders to become acquainted with them.
- Article 3.2 of the ILP Agreement, because the CI Requirement constitutes a non-automatic import licensing procedure and has trade-restrictive or -distortive effects on imports additional to those caused by the imposition of any restriction that the CI Requirement purports to implement; because it is broader in scope and duration than any measure it is used to implement; and because it is more administratively burdensome than absolutely necessary to administer any such measure.
- Article 3.3 of the ILP Agreement, because Argentina has not published sufficient information for other Members and traders to know the basis for granting and/or allocating licenses.
- Article 3.5(f) of the ILP Agreement, because the period for processing applications exceeds the maximum permitted by that provision.

- Article 5.2(g) of the ILP Agreement, because Argentina has not included the information regarding the measure being implemented through the licensing procedures in its notifications.

III. RESTRICTIVE TRADE-RELATED REQUIREMENTS

Separately and/or in combination with the measures described in Sections I and II, Argentina requires economic operators to undertake certain actions with a view to pursuing Argentina's stated policy objectives of elimination of trade balance deficits and import substitution. Those actions include to: (1) export a certain value of goods from Argentina related to the value of imports; (2) limit the volume of imports and/or reduce their price; (3) refrain from repatriating funds from Argentina to another country; (4) make or increase investments in Argentina (including in production facilities); and/or (5) incorporate local content into domestically produced goods.

These requirements are not stipulated in any published law or regulation. To satisfy these requirements, economic operators normally either submit a statement or conclude an agreement with Argentina setting out the actions they will take. Argentina enforces these commitments by withholding permission to import, *inter alia*, by withholding the issuance of DJAI or CI approvals.

The United States considers that whether analyzed separately or together with the measures described in Sections I and II, these requirements, and any application thereof, are inconsistent with the following provisions:

- Article III:4 of GATT 1994, to the extent that Argentina requires domestic producers to increase local content and/or limit imports to an amount related to the volume or value of local products that they export.
- Article X:1 of the GATT 1994, because Argentina has failed to publish promptly, in such a manner as to enable governments and traders to become acquainted with them, the laws, regulations and administrative rulings of general application pertaining to the operation of the measure.
- Article XI:1 of the GATT 1994, because the measure prohibits or restricts the importation of goods.

Accordingly, the United States respectfully requests that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

Annex I

Declaración Jurada Anticipada de Importación (DJAI)

- Resolución AFIP 3252/2012
- Resolución AFIP 3255/2012
- Resolución AFIP 3256/2012
- Resolución SCI 1/2012
- Comunicación del Banco Central "A" 5274 of 1.30.2012
- Any amendments, replacements, extensions, or implementing measures

Annex II

Non-automatic licenses (Licencias No Automáticas de Importación) in the form of import certificates (Certificados de Importación)

- Import certificate for shoes (productos del sector calzado) - C.I.C.: Resolución MEyOSP 977/99, Resolución SICM 736/99 and Resolución MEyP 486/2005
 - Import certificate for paper (papel) - C.I.P.: Resolución MEyOSP 1117/99 and Resolución SICyM 798/99
 - Import certificate for household products (artículos para el hogar) - C.I.A.H.: Resolución MEyP 444/2004 and Resolución SICPME 177/2004
 - Import certificate for toys (juguetes) - C.I.J.: Resolución MEyP 485/2005
 - Import certificate for motorcycles (motocicletas) - C.I.M.: Resolución MEyP 689/2006
 - Import certificate for bicycle tires (cubiertas y cámaras neumáticas de bicicletas) - C.I.C.C.N.B.: Resolución MEyP 694/2006
 - Import certificate for miscellaneous manufactured products (manufacturas diversas) - C.I.M.D.: Resolución MEyP 47/2007
 - Import certificate for shoe parts (partes de calzado) - C.I.P.C.: Resolución MEyP 61/2007
 - Import certificate for balls (pelotas) - C.I.P.: Resolución MEyP 217/2007
 - Import certificate for textile products (productos textiles) - C.I.P.T.: Resolución MEyP 343/2007
 - Import certificate for metal products (productos metalúrgicos) - C.I.P.M.: Resolución MEyP 588/2008
 - Import certificate for yarns (hilados y tejidos) - C.I.H.T.: Resolución MEyP 589/2008
 - Import certificate for tires (neumáticos) - C.I.N.: Resolución MP 26/2009
 - Import certificate for miscellaneous products (productos varios) - C.I.P.V.: Resolución MP 61/2009
 - Import certificate for screws and similar products (tornillos y afines) - C.I.T.A.: Resolución MP 165/2009
 - Import certificate for autoparts (autopartes y afines) - C.I.A.P.A.: Resolución MP 337/2009
 - Import certificate for motor vehicles (vehículos automóviles) - C.I.V.A.: Resolución MI 45/2011
 - Any amendments, replacements, extensions, or implementing measures
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