



29 September 2014

(14-5434)

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Original: English

ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS

NOTIFICATION OF AN APPEAL BY ARGENTINA UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following notification, dated 26 September 2014, from the Delegation of Argentina, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 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 in the reports of the Panel in *Argentina – Measures Affecting the Importation of Goods* (WT/DS438/444/445) ("Panel Report").

2. The measures at issue are the *Declaración Jurada Anticipada de Importación* ("DJAI") and the alleged "Trade-Related Requirements" ("TRRs") measure.

3. The issues that Argentina raises in this appeal relate to the Panel's findings and conclusions in respect of the Panel's terms of reference under the DSU, as well as the Panel's findings and conclusions with respect to the consistency of the challenged measures with various provisions of the General Agreement on Tariffs and Trade 1994 ("GATT 1994").

4. Pursuant to Rules 20(1) and 21(1) of the Working Procedures, Argentina files this Notice of Appeal together with its Appellant's Submission with the Appellate Body Secretariat.

5. Pursuant to Rule 20(2)(d)(iii) of the Working Procedures, this Notice of 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 appeal.

I. REVIEW OF THE PANEL'S FINDINGS REGARDING THE PANEL'S TERMS OF REFERENCE

6. Argentina seeks review by the Appellate Body of the Panel's finding that the alleged "TRRs" measure was within its terms of reference. The Panel's errors of law and legal interpretation include:

- The Panel erred by relying on its prior "conclusion" that the alleged "TRRs" measure was "explicitly identified as a measure at issue" in the complainants' consultations requests;¹

¹ Panel Report, Annex D.1, para. 3.30.

- The Panel erred by failing to consider Argentina's argument that the complainants' introduction in their panel requests of "as such" or equally broad claims with respect to the alleged "TRRs" measure impermissibly expanded the scope of the dispute.²

7. For these reasons, Argentina requests that the Appellate Body reverse the Panel's conclusion in paragraph 4.1(b) of the Preliminary Ruling by the Panel (16 September 2013), in which the Panel concluded that "[t]he characterization of the RTRRs as a single 'overarching measure' in the complainants' panel requests does not expand the scope or change the essence of the dispute."³ Argentina requests that the Appellate Body also reverse the Panel's ultimate conclusions to this effect in paragraphs 7.1(b), 7.5(b), and 7.9(b) of the Panel Report.

8. Argentina requests that the Appellate Body find, instead, that the complainants' introduction of the alleged "TRRs" measure in their panel requests did expand the scope or change the essence of the dispute, and that the alleged measure was therefore outside of the Panel's terms of reference.

II. REVIEW OF THE PANEL'S FINDINGS UNDER ARTICLES III:4 AND XI:1 OF THE GATT 1994 AS THEY PERTAIN TO THE ALLEGED "TRRS" MEASURE

9. Argentina seeks review by the Appellate Body of the Panel's findings that the alleged "TRRs" measure is inconsistent with Articles III:4 and XI:1 of the GATT 1994, as well as the Panel's separate findings that the alleged "TRRs" measure is inconsistent "as such" with Articles XI:1 and III:4 of the GATT 1994. The Panel's errors of law and legal interpretation include:

- The Panel erred in failing to apply the correct legal standard to ascertain the existence of the alleged "TRRs measure";⁴
- The Panel acted inconsistently with its duty under Article 11 of the DSU to conduct an objective assessment of the matter when assessing Japan's "as such" claims against the alleged "TRRs measure".⁵

10. Argentina therefore respectfully requests that the Appellate Body reverse the Panel's finding that the complainants had established that the alleged "TRRs measure" existed or "operate[d] as a single measure",⁶ as well as the Panel's findings that the alleged measure was inconsistent with Articles XI:1 and III:4 of the GATT 1994.⁷ Accordingly, Argentina respectfully requests that the Appellate Body reverse the Panel's ultimate conclusions to this effect in paragraphs 7.1(d)-(f), 7.5(c)-(d), and 7.9(d)-(f) of the Panel Report.

11. Argentina also respectfully requests that the Appellate Body reverse the Panel's ultimate conclusion in paragraph 7.9(h) that the alleged "TRRs measure" is "as such" inconsistent with Articles XI:1 and III:4 of the GATT 1994.

III. REVIEW OF THE PANEL'S FINDINGS UNDER ARTICLES VIII AND XI OF THE GATT 1994 AS THEY PERTAIN TO THE DJAI

12. Argentina seeks review by the Appellate Body certain limited aspects of the Panel's findings and conclusions in respect the interpretation and application of Articles VIII and XI:1 of the GATT 1994 as they pertain to the DJAI. The Panel's errors of law and legal interpretation include:

- The Panel erred in its assessment of the scope of Article VIII, and in particular in its implication that Article VIII does not encompass import procedures that are a "necessary pre-requisite for importing goods";⁸

² Panel Report, Annex D.1, paras. 3.29-3.33.

³ Panel Report, Annex D.1, para. 4.1(b).

⁴ Panel Report, paras. 6.138-6.231.

⁵ Panel Report, paras. 6.315-6.343.

⁶ Panel Report, para. 6.231.

⁷ Panel Report, paras. 6.265, 6.295, 6.343.

⁸ Panel Report, paras. 6.425-6.444.

- The Panel erred in not establishing and applying a proper analytical framework for distinguishing between the scope and disciplines of Article VIII, on the one hand, and the scope and disciplines of Article XI:1, on the other;⁹ and,
- The Panel erred in its conclusion that the DJAI procedure is inconsistent with Article XI:1 based on its finding that the approval of a DJAI application is not "automatic".¹⁰

13. For these reasons, Argentina requests that the Appellate Body modify or reverse the Panel's findings in paragraph 6.433 of the Panel Report implying that any import procedure that is a "necessary pre-requisite for importing goods" or by which a Member "determines the right to import" to be outside the scope of Article VIII.

14. Argentina respectfully requests the Appellate Body to modify the Panel's reasoning in paragraphs 6.435 to 6.445 of the Panel Report and to find that, to the extent that import formalities and requirements can be examined under Article XI:1 at all, a finding of inconsistency would require the complaining Member to prove that: (1) the formality or requirement at issue limits the quantity or amount of imports to a material degree that is separate and independent of the trade-restricting effect of any substantive rule of importation that the formality or requirement implements; and (2) this separate and independent trade-restricting effect is greater than the effect that would ordinarily be associated with a formality or requirement of its nature.

15. Argentina respectfully requests the Appellate Body to reverse the Panel's finding in paragraph 6.474 of the Panel Report that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994 on the grounds that the attainment of a DJAI in exit status is not "automatic". Argentina also requests that the Appellate Body reverse the Panel's ultimate conclusion that the DJAI procedure is inconsistent with Article XI:1, as set forth in paragraphs 6.479, 7.2(a), 7.6(a) and 7.10(a) of the Panel Report.

⁹ Panel Report, paras. 6.435-6.445.

¹⁰ Panel Report, paras. 6.461, 6.474.