

ANNEX 1



WORLD TRADE
ORGANIZATION

WT/DS438/15
WT/DS444/14
WT/DS445/14

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
- 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:

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

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.

- 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
- 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.

⁸ Panel Report, paras. 6.425-6.444.

⁹ Panel Report, paras. 6.435-6.445.

¹⁰ Panel Report, paras. 6.461, 6.474.

ANNEX 2

WORLD TRADE
ORGANIZATION

WT/DS438/16

2 October 2014

(14-5540)

Page: 1/1

Original: English

ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS**NOTIFICATION OF AN OTHER APPEAL BY THE EUROPEAN UNION
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),
AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following notification, dated 1 October 2014, from the Delegation of the European Union, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Rule 23 of the *Working Procedures for Appellate Review*, the European Union hereby notifies its decision to appeal to the Appellate Body certain issues of law and certain legal interpretations developed by the Panel in *Argentina – Measures Affecting the Importation of Goods* (WT/DS438/R) (Panel Report).

2. The European Union submits that the Panel made an error in applying Article 6.2 of the DSU when determining its terms of reference in this case. Specifically, The European Union submits that the Panel erred when finding that the 23 measures described by the European Union in Section 4.2.4 of its first written submission as "specific instances" of application of alleged RTRRs were not precisely identified in the EU's Panel Request as measures at issue and that, accordingly, those 23 measures did not constitute "measures at issue" in the present dispute.¹ Those measures were clearly identified on substance in the EU's Panel Request in accordance with the requirements under Article 6.2 of the DSU. Thus, they were "measures at issue" in this dispute and the Panel should have examined them accordingly.

3. Moreover, as a conditional appeal, should the Appellate Body agree with Argentina's appeal in this case and, thus, reverse or otherwise modify any of the Panel's findings that the TTR measure exists and that was inconsistent with Articles XI:1 and III:4 of the GATT 1994, the European Union requests the Appellate Body to complete the analysis and find that Argentina violated Articles XI:1 and/or III:4 of the GATT 1994 in each of the 23 specific measures described by the European Union in Section 4.2.4 of its first written submission.

¹ See e.g. Preliminary Ruling of 20 November 2013, para. 4.38; and Panel Report, para. 7.1(c).

ANNEX 3

WORLD TRADE
ORGANIZATION

WT/DS445/15

2 October 2014

(14-5541)

Page: 1/1

Original: English

ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS**NOTIFICATION OF AN OTHER APPEAL BY JAPAN
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),
AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following notification, dated 1 October 2014, from the Delegation of Japan, is being circulated to Members.

Pursuant to Article 16.4 and Article 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23 of the *Working Procedures for Appellate Review*, Japan hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report in *Argentina – Measures Affecting the Importation of Goods* (WT/DS445/R) and certain legal interpretations developed by the Panel in this dispute.

The Panel Report was based on a meticulous and objective review of the extensive factual record before it, as well as sound legal reasoning. Japan appeals only one limited aspect of the Panel Report, in accordance with Rule 23(2)(c)(ii) of the *Working Procedures for Appellate Review*. In particular, Japan submits that the Panel erred by exercising false judicial economy with respect to Japan's claim against the TRRs measure under Article X:1 of the GATT 1994, as reflected at paragraphs 6.305 and 7.9(g) of its Report. This exercise of judicial economy was false because it would prevent an "effective resolution" of this dispute. In declining to address Japan's claim under Article X:1, the Panel falsely applied judicial economy and acted inconsistently with its obligations under Articles 3.4, 3.7, 7.2, and/or 11 of the DSU. Japan therefore respectfully requests that the Appellate Body reverse the Panel's exercise of judicial economy in this regard and complete the analysis to find that Argentina administers the TRRs measure in a manner that is inconsistent with its obligations under Article X:1.

ANNEX 4

The following communication, dated 3 October 2014, was sent to all participants and third participants in this appeal.

Argentina – Measures Affecting the Importation of Goods

AB-2014-9

On 29 September 2014, the Appellate Body received a letter from Japan requesting that the oral hearing in this appeal not be scheduled during the period of 3-5 November 2014 due to a scheduling conflict of a key member of Japan's litigation team.

Also on 29 September 2014, the Division hearing this appeal wrote to the other participants and to the third participants soliciting their views on Japan's request. On 1 October 2014, comments were received from Argentina, the European Union, and the United States.

In their comments, none of the other participants objected to Japan's request. However, Argentina and the European Union each indicated their own scheduling constraints and requested that the oral hearing not be held on certain other dates (27-31 October and 11-12 November, respectively). The United States did not object to Japan's request, but expressed a preference that the oral hearing not be unduly delayed to a date more than 45 days after the date of the Notice of Appeal, and noted that an oral hearing after 21 November 2014 would cause a scheduling conflict for its lead counsel.

In the draft Working Schedule for this appeal drawn up prior to the receipt of Japan's letter of 29 September 2014, the Appellate Body had scheduled the oral hearing in this appeal to take place on 3-4 November 2014. The scheduling of the oral hearing in this appeal was coordinated with the working schedules of the Appellate Body in the two other proceedings that are also currently before the Appellate Body in *US – Carbon Steel (India)* (DS436) and *US – Countervailing Measures (China)* (DS437). The overlap in the dates of the three working schedules, and in the composition of the Divisions hearing these three appeals, left the Appellate Body with limited choices for scheduling the oral hearings as well as its internal deliberations in these appeals.

In the light of the above-mentioned scheduling constraints, and taking into consideration the concerns expressed by the other participants over alternative dates for the oral hearing, the Division regrets that it is not in a position to accommodate Japan's request.

The oral hearing in this appeal is therefore scheduled for 3-4 November 2014. Please find enclosed a revised Working Schedule for appeal that includes these dates for the oral hearing.
