

## 6 FINDINGS AND CONCLUSIONS IN THE APPELLATE BODY REPORT IN DS438

6.1. In the appeal of the Panel Report, *Argentina – Measures Affecting the Importation of Goods* (WT/DS438/R) (EU Panel Report), for the reasons set out in section 5.1 of this Report, with respect to the Panel's terms of reference, the Appellate Body:

- a. upholds the Panel's finding in paragraph 7.1.b that "[t]he characterization of the [TRRs] as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute"<sup>1</sup>; and, consequently, finds that the TRRs measure was within the Panel's terms of reference; and
- b. with respect to the Panel's finding regarding the 23 specific instances of application of the TRRs identified in section 4.2.4 of the European Union's first written submission:
  - i. reverses the Panel's finding in paragraph 7.1.c that these 23 specific instances of application of the TRRs were not precisely identified in the EU Panel Request as measures at issue, and thus do not constitute measures at issue in this dispute<sup>2</sup>;
  - ii. finds, instead, that the EU Panel Request identified the 23 specific instances of application of the TRRs as "specific measures at issue" in conformity with Article 6.2 of the DSU, and that these measures are, therefore, within the Panel's terms of reference; and
  - iii. finds it unnecessary to rule on the European Union's request for completion of the analysis with respect to the 23 specific instances of application of the TRRs as measures at issue, as the conditions on which such request is premised are not met.

6.2. For the reasons set out in section 5.2 of this Report, with respect to the TRRs measure, the Appellate Body:

- a. upholds the Panel's finding in paragraph 7.1.d that "[t]he Argentine authorities' imposition on economic operators of one or more of the five trade-related requirements identified by the complainants as a condition to import or to obtain certain benefits, operates as a single measure (the TRRs measure) attributable to Argentina"<sup>3</sup>; and, as a consequence,
- b. upholds the Panel's finding in paragraph 7.1.e that "[t]he TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994"<sup>4</sup>; and also
- c. upholds the Panel's finding in paragraph 7.1.f that "[t]he TRRs measure, with respect to its local content requirement" is inconsistent with Article III:4 of the GATT 1994 because it "modifies the conditions of competition in the Argentine market, so that imported products are granted less favourable treatment than like domestic products".<sup>5</sup>

6.3. For the reasons set out in section 5.3 of this Report, with respect to the DJAI procedure, the Appellate Body:

- a. finds that Argentina has not established that the Panel erred in its interpretation of Article XI:1, or Article VIII, of the GATT 1994;
- b. finds that Argentina has not established that the Panel erred in its application of Article XI:1 of the GATT 1994 to the DJAI procedure; and, as a consequence,

<sup>1</sup> See also Panel Reports, para. 6.14; and First Preliminary Ruling, para. 4.1.b.

<sup>2</sup> See also Panel Reports, para. 6.14; and Second Preliminary Ruling, para. 5.1.b.

<sup>3</sup> See also Panel Reports, para. 6.231.

<sup>4</sup> See also Panel Reports, para. 6.265.

<sup>5</sup> See also Panel Reports, para. 6.295.

- c. upholds the Panel's finding in paragraph 7.2.a that the DJAI procedure "constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994".<sup>6</sup>

6.4. The Appellate Body recommends that the DSB request Argentina to bring its measures found in this Report, and in the EU Panel Report as modified by this Report, to be inconsistent with the GATT 1994 into conformity with that Agreement.

Signed in the original in Geneva this 12th day of December 2014 by:

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Seung Wha Chang  
Presiding Member

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Ujal Singh Bhatia  
Member

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Ricardo Ramírez-Hernández  
Member

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<sup>6</sup> See also Panel Reports, para. 6.479.

## 6 FINDINGS AND CONCLUSIONS IN THE APPELLATE BODY REPORT IN DS444

6.1. In the appeal of the Panel Report, *Argentina – Measures Affecting the Importation of Goods* (WT/DS444/R) (US Panel Report), for the reasons set out in section 5.1.1 of this Report, with respect to the Panel's terms of reference, the Appellate Body:

- a. upholds the Panel's finding in paragraph 7.5.b that "[t]he characterization of the [TRRs] as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute"<sup>1</sup>; and, consequently, finds that the TRRs measure was within the Panel's terms of reference.

6.2. For the reasons set out in section 5.2 of this Report, with respect to the TRRs measure, the Appellate Body:

- a. upholds the Panel's finding in paragraph 7.5.c that "[t]he Argentine authorities' imposition on economic operators of one or more of the five trade-related requirements identified by the complainants as a condition to import or to obtain certain benefits, operates as a single measure (the TRRs measure) attributable to Argentina"<sup>2</sup>; and, as a consequence,
- b. upholds the Panel's finding in paragraph 7.5.d that "[t]he TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994".<sup>3</sup>

6.3. For the reasons set out in section 5.3 of this Report, with respect to the DJAI procedure, the Appellate Body:

- a. finds that Argentina has not established that the Panel erred in its interpretation of Article XI:1, or Article VIII, of the GATT 1994;
- b. finds that Argentina has not established that the Panel erred in its application of Article XI:1 of the GATT 1994 to the DJAI procedure; and, as a consequence,
- c. upholds the Panel's finding in paragraph 7.6.a that the DJAI procedure "constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994".<sup>4</sup>

6.4. The Appellate Body recommends that the DSB request Argentina to bring its measures found in this Report, and in the US Panel Report as upheld by this Report, to be inconsistent with the GATT 1994 into conformity with that Agreement.

Signed in the original in Geneva this 12th day of December 2014 by:

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Seung Wha Chang  
Presiding Member

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Ujal Singh Bhatia  
Member

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Ricardo Ramírez-Hernández  
Member

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<sup>1</sup> See also Panel Reports, para. 6.14; and First Preliminary Ruling, para. 4.1.b.

<sup>2</sup> See also Panel Reports, para. 6.231.

<sup>3</sup> See also Panel Reports, para. 6.265.

<sup>4</sup> See also Panel Reports, para. 6.479.



## 6 FINDINGS AND CONCLUSIONS IN THE APPELLATE BODY REPORT IN DS445

6.1. In the appeal of the Panel Report, *Argentina – Measures Affecting the Importation of Goods* (WT/DS445/R) (Japan Panel Report), for the reasons set out in section 5.1.1 of this Report, with respect to the Panel's terms of reference, the Appellate Body:

- a. upholds the Panel's finding in paragraph 7.9.b that "[t]he characterization of the [TRRs] as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute"<sup>1</sup>; and, consequently, finds that the TRRs measure was within the Panel's terms of reference.

6.2. For the reasons set out in section 5.2 of this Report, with respect to the TRRs measure, the Appellate Body:

- a. upholds the Panel's finding in paragraph 7.9.d that "[t]he Argentine authorities' imposition on economic operators of one or more of the five trade-related requirements identified by the complainants as a condition to import or to obtain certain benefits, operates as a single measure (the TRRs measure) attributable to Argentina"<sup>2</sup>; and, as a consequence,
- b. upholds the Panel's finding in paragraph 7.9.e that "[t]he TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994"<sup>3</sup>; and also
- c. upholds the Panel's finding in paragraph 7.9.f that "[t]he TRRs measure, with respect to its local content requirement" is inconsistent with Article III:4 of the GATT 1994 because it "modifies the conditions of competition in the Argentine market, so that imported products are granted less favourable treatment than like domestic products"<sup>4</sup>;
- d. finds that Argentina has not established that, in assessing Japan's "as such" claims, the Panel acted inconsistently with Article 11 of the DSU; and
- e. finds that Japan has not established that the Panel erred, in paragraph 7.9.g of the Japan Panel Report<sup>5</sup>, in exercising judicial economy on Japan's claim that the TRRs measure is inconsistent with Article X:1 of the GATT 1994.

6.3. For the reasons set out in section 5.3 of this Report, with respect to the DJAI procedure, the Appellate Body:

- a. finds that Argentina has not established that the Panel erred in its interpretation of Article XI:1, or Article VIII, of the GATT 1994;
- b. finds that Argentina has not established that the Panel erred in its application of Article XI:1 of the GATT 1994 to the DJAI procedure; and, as a consequence,
- c. upholds the Panel's finding in paragraph 7.10.a that the DJAI procedure "constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994".<sup>6</sup>

6.4. The Appellate Body recommends that the DSB request Argentina to bring its measures found in this Report, and in the Japan Panel Report as upheld by this Report, to be inconsistent with the GATT 1994 into conformity with that Agreement.

<sup>1</sup> See also Panel Reports, para. 6.14; and First Preliminary Ruling, para. 4.1.b.

<sup>2</sup> See also Panel Reports, para. 6.231.

<sup>3</sup> See also Panel Reports, para. 6.265.

<sup>4</sup> See also Panel Reports, para. 6.295.

<sup>5</sup> See also Panel Reports, para. 6.305.

<sup>6</sup> See also Panel Reports, para. 6.479.

Signed in the original in Geneva this 12th day of December 2014 by:

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Seung Wha Chang  
Presiding Member

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Ujal Singh Bhatia  
Member

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Ricardo Ramírez-Hernández  
Member