

7 CONCLUSIONS AND RECOMMENDATIONS

7.1 Complaint by the European Union (DS438)

7.1. With respect to the single Trade-Related Requirements measure (TRRs measure), the Panel concludes that:

- a. The complainants properly identified the alleged "Restrictive Trade Related Requirements" (RTRRs) in their requests for consultations as well as in their panel requests; therefore, these actions are part of the Panel's terms of reference;
- b. The characterization of the RTRRs as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute;
- c. 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 European Union's panel request as measures at issue; accordingly, those 23 measures do not constitute "measures at issue" in the present dispute;
- d. The 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;
- e. The TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- f. The TRRs measure, with respect to its local content requirement, modifies the conditions of competition in the Argentine market, so that imported products are granted less favourable treatment than like domestic products; accordingly, the TRRs measure, with respect to its local content requirement, is inconsistent with Article III:4 of the GATT 1994; and
- g. An additional finding under Article X:1 of the GATT 1994 regarding the TRRs measure is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim.

7.2. With respect to the procedure for the Advance Sworn Import Declaration (DJAI), the Panel concludes that:

- a. The DJAI procedure, irrespective of whether it constitutes an import licence, constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- b. Having found that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994, an additional finding under the same provision regarding the DJAI procedure considered as an import licence, is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim;
- c. An additional finding under Article X:1 of the GATT 1994 regarding the DJAI procedure is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim;
- d. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article X:3(a) of the GATT 1994 or with Articles 1.3, 1.4(a), 1.6, 3.5(f) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these claims;

- e. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, an additional finding regarding the same measure under Articles 3.2 and 3.3 of the Import Licensing Agreement is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings in respect of this particular claim.
- f. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has failed to notify the DJAI procedure in a manner inconsistent with Articles 1.4(a), 5.1, 5.2, 5.3 or 5.4 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these particular claims.

7.3. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, the Panel concludes that to the extent that Argentina has acted inconsistently with Articles XI:1 and III:4 of the GATT 1994, it has nullified or impaired benefits accruing to the European Union under this agreement.

7.4. Pursuant to Article 19.1 of the DSU, the Panel recommends that the Dispute Settlement Body request Argentina to bring the inconsistent measures into conformity with its obligations under the GATT 1994.

7.2 Complaint by the United States (DS444)

7.5. With respect to the single Trade-Related Requirements measure (TRRs measure), the Panel concludes that:

- a. The complainants properly identified the alleged "Restrictive Trade Related Requirements" (RTRRs) in their requests for consultations as well as in their panel requests; therefore, these actions are part of the Panel's terms of reference;
- b. The characterization of the RTRRs as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute;
- c. The 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;
- d. The TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994; and
- e. An additional finding under Article X:1 of the GATT 1994 regarding the TRRs measure is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim.

7.6. With respect to the procedure for the Advance Sworn Import Declaration (DJAI), the Panel concludes that:

- a. The DJAI procedure, irrespective of whether it constitutes an import licence, constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- b. Having found that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994, an additional finding under the same provision regarding the DJAI procedure considered as an import licence, is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim;
- c. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article X:3(a) of the GATT 1994 or with Articles 1.4(a), 1.6, 3.5(f) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these claims;
- d. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, an additional finding regarding the same measure under Articles 3.2 and 3.3 of the Import Licensing Agreement is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings in respect of this particular claim.
- e. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has failed to notify the DJAI procedure in a manner inconsistent with Articles 1.4(a), 5.1, 5.2, 5.3 or 5.4 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these particular claims.

7.7. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, the Panel concludes that to the extent that Argentina has acted inconsistently with Article XI:1 of the GATT 1994, it has nullified or impaired benefits accruing to the United States under this agreement.

7.8. Pursuant to Article 19.1 of the DSU, the Panel recommends that the Dispute Settlement Body request Argentina to bring the inconsistent measures into conformity with its obligations under the GATT 1994.

7.3 Complaint by Japan (DS445)

7.9. With respect to the single Trade-Related Requirements measure (TRRs measure), the Panel concludes that:

- a. The complainants properly identified the alleged "Restrictive Trade Related Requirements" (RTRRs) in their requests for consultations as well as in their panel requests; therefore, these actions are part of the Panel's terms of reference;
- b. The characterization of the RTRRs as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute;
- c. 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 European Union's panel request as measures at issue; accordingly, those 23 measures do not constitute "measures at issue" in the present dispute;
- d. The 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;
- e. The TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- f. The TRRs measure, with respect to its local content requirement, modifies the conditions of competition in the Argentine market, so that imported products are granted less favourable treatment than like domestic products; accordingly, the TRRs measure, with respect to its local content requirement, is inconsistent with Article III:4 of the GATT 1994;
- g. An additional finding under Article X:1 of the GATT 1994 regarding the TRRs measure is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim; and
- h. Having found that the TRRs measure is inconsistent with Article XI:1 of the GATT 1994, as well as with Article III:4 of the GATT 1994 with respect to the local content requirement, and that the TRRs measure is of general and prospective application, the TRRs measure is also inconsistent with the above-mentioned provisions "as such".

7.10. With respect to the procedure for the Advance Sworn Import Declaration (DJAI), the Panel concludes that:

- a. The DJAI procedure, irrespective of whether it constitutes an import licence, constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- b. Having found that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994, an additional finding under the same provision regarding the DJAI procedure considered as an import licence, is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim;
- c. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article X:3(a) of the GATT 1994 or with Articles 1.3, 1.4(a), 1.6, 3.5(f) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these claims;
- d. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, an additional finding regarding the same

measure under Articles 3.2 and 3.3 of the Import Licensing Agreement is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings in respect of this particular claim.

- e. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has failed to notify the DJAI procedure in a manner inconsistent with Articles 1.4(a), 5.1, 5.2, 5.3 or 5.4 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these particular claims.

7.11. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, the Panel concludes that to the extent that Argentina has acted inconsistently with Articles XI:1 and III:4 of the GATT 1994, it has nullified or impaired benefits accruing to Japan under this agreement.

7.12. Pursuant to Article 19.1 of the DSU, the Panel recommends that the Dispute Settlement Body request Argentina to bring the inconsistent measures into conformity with its obligations under the GATT 1994.
