

ARGENTINA – HIDES AND LEATHER¹

(DS155)

| PARTIES | | AGREEMENT | TIMELINE OF THE DISPUTE | |
|-------------|-----------------------------|---------------------------------------|-----------------------------|-------------------------|
| Complainant | <i>European Communities</i> | <i>GATT Arts. III:2, X, XI and XX</i> | Establishment of Panel | <i>26 July 1999</i> |
| | | | Circulation of Panel Report | <i>19 December 2000</i> |
| Respondent | <i>Argentina</i> | | Circulation of AB Report | <i>NA</i> |
| | | | Adoption | <i>16 February 2001</i> |

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Argentine regulations by which representatives of the Argentine leather tanning industry were present during the customs clearance process for bovine hides export; and (ii) advance tax payments that allegedly imposed a higher tax burden on imports.
- **Product at issue:** Argentine exports of bovine hides and calf skins, semi-finished and finished leather.

2. SUMMARY OF KEY PANEL FINDINGS²

Regulations on export control

- **GATT Art. XI:1 (prohibition on quantitative restrictions):** The Panel rejected the EC claim that the Argentine regulations on export procedures were an export restriction prohibited by Art. XI. The European Communities had failed to meet its burden of proving that the presence of the tanners' representatives during customs procedures, along with the disclosure of information about the slaughterhouses and any possible abuse of this information, was an export restriction under Art. XI:1.
- **GATT Art. X:3(a) (trade regulations – uniform, impartial and reasonable administration):** Having concluded that Art. X:3(a) applied to the measure at issue, as (i) the substance of the measure at issue was “administrative in nature” and did not establish substantive customs rules for enforcement of export laws and (ii) the measure was a law of “general application,” rather than a law applying only to the specific shipments of products, the Panel found that the measure was not administered in a reasonable and impartial manner and consequently was inconsistent with Art. X:3(a). This finding was based on the consideration that the confidentiality of information was not guaranteed (*unreasonable* administration) and the procedure allowed persons with adverse commercial interests to obtain confidential information to which they had no right (*partial* administration).

Advance tax payments

- **GATT Art. III:2 (national treatment – taxes and charges), first sentence (like products):** Having found that advance tax payment requirements were financial burdens that tax imports in excess of domestic products (in the form of an opportunity cost (interest lost) and a debt financing (interest paid)), the Panel concluded that the requirements were in violation of Art. III:2, first sentence.
- **GATT Art. XX(d) (exceptions – necessary to secure compliance with laws):** Although the Panel found that the measures were necessary to secure compliance with Argentina's tax law and, thus, fell within the terms of Art. XX(d), it concluded that they could not be justified because they resulted in “unjustifiable discrimination” under the chapeau of Art. XX when they were not “unavoidable” for the operation of Argentina's tax law and when there were several alternative measures available.

¹ *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather*

² Other issues addressed: preliminary statements on the interpretation of Arts. X and XI (government measure, etc.); government “measure”.