ARGENTINA – CERAMIC TILES¹
(DS189)

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Argentina’s definitive anti-dumping duties on certain imports.
- **Product at issue:** Imports of ceramic floor tiles from Italy.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 6.8 and Annex II (evidence – facts available):** The Panel found that Art. 6.8, in conjunction with Annex II(6), requires an investigating authority to inform the party supplying information on the reasons why evidence or information is not accepted, to provide an opportunity to provide further explanation within a reasonable period, and to give, in any published determinations, the reasons for the rejection of evidence of information. The Panel then concluded that the Argentine investigating authority (“DCD”) acted inconsistently with these requirements under Art. 6.8 by failing to explain its evaluation of the information that led it to disregard in large part the information provided by exporters, resorting instead to the use of facts available. The Panel also rejected Argentina’s various justifications for relying on facts available.

- **ADA Art. 6.10 (evidence – individual dumping margins):** The Panel found that the DCD acted inconsistently with Art. 6.10 by imposing the same duty rate on all imports and thus by failing to calculate individual margins for each of the four exporters in the sample and failing to provide, in its final determination, explanations on why it could not calculate individual dumping margins.

- **ADA Art. 2.4 (dumping determination – adjustments for differences affecting price comparability):** The Panel first noted that Art. 2.4 requires the investigating authority to make due allowance for differences [inter alia, in physical characteristics] which affect price comparability and to indicate to the parties what information is necessary to ensure a fair comparison between normal value and export prices. The Panel then found that the DCD acted inconsistently with Art. 2.4 by collecting data for only one quality type and one polish type of tiles and thus by failing to make additional adjustments for other physical differences affecting price comparability.

- **ADA Art. 6.9 (evidence – essential facts):** The Panel found that the DCD violated Art. 6.9 by failing to inform the exporters of the “essential facts under consideration which formed the basis for the decision whether to apply definitive measures”. In light of the “state of the record” in this case (which contained a great deal of information collected from the exporters, the petitioner, importers and official registers), the exporters could not have been aware, simply by reviewing the complete record, that evidence submitted by petitioners, rather than that submitted by the exporters, would form the primary basis of the DCD’s determination. In this regard, the Panel interpreted Art. 6.9 to mean that essential facts must be disclosed so that parties can defend their interests, for example by commenting on the completeness of the essential facts under consideration.

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¹ Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy