ARGENTINA – IMPORT MEASURES
(DS438, 444, 445)

1. MEASURES AND PRODUCTS AT ISSUE

- **Measures at issue:** (1) The imposition by Argentine authorities on economic operators of one or more of the following trade-related requirements (TRRs), as a condition to import into Argentina or to obtain certain benefits: (a) to offset the value of imports with, at least, an equivalent value of exports; (b) to limit imports, either in volume or in value; (c) to reach a certain level of local content in domestic production; (d) to make investments in Argentina; and, (e) to refrain from repatriating profits; and (2) the procedures concerning an Advance Sworn Import Declaration (Declaración Jurada Anticipada de Importación, DJAI), required for most imports of goods into Argentina.

- **Product at issue:** Imports into Argentina.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **The Appellate Body upheld the Panel’s finding that the Argentine authorities’ imposition on economic operators of one or more five trade-related requirements (TRRs), as a condition to import or to obtain certain benefits, operated as a single measure attributable to Argentina (a TRRs measure).**

- **DSU Art. 6.2 (requirements of panel request):** The Appellate Body reversed the Panel’s finding that 23 specific instances of application of the TRRs were not properly identified in the European Union’s panel request as measures at issue and were not within the Panel’s terms of reference. However, the Appellate Body found it unnecessary to complete the analysis with respect to those 23 specific instances of application of the TRRs, because the conditions on which the European Union based its appeal were not met.

- **GATT Art. XI (prohibition on quantitative restrictions):** The Appellate Body upheld the Panel’s finding that the TRRs measure was a restriction on the importation of goods, inconsistent with Art. XI:1.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Appellate Body upheld the Panel’s finding that, with respect to the local content requirement, the TRRs measure was inconsistent with Art. III:4 because it modified the conditions of competition in the Argentine market so that imported products were granted less favourable treatment than like domestic products.

- **DSU Art. 11 (standard of review):** The Appellate Body found that the Panel had not acted inconsistently with Art. 11 in finding that the TRRs measure as such was inconsistent with Arts. XI:1 and III:4 of the GATT 1994.

- **GATT Art. XI:1:** The Appellate Body upheld the Panel’s finding that the DJAI procedure, irrespective of whether it was an import licence, constituted an import restriction that was inconsistent with Art. XI:1.

3. OTHER ISSUES

- One of the two measures challenged by the complainants (the TRRs measure) was unwritten. At the request of Japan, the Panel made findings, not only about the application of the trade-related requirements, but also about the TRRs measure as such.

- The Appellate Body endorsed the Panel’s statement that nothing in the Panel’s rulings called into question the ability of WTO Members to pursue their development policies, such as those identified by Argentina, in a manner consistent with the overall objectives stated in the preamble of the WTO Agreement and their commitments under the WTO agreements.

- In a decision that was not appealed, the Panel refrained from making additional findings with respect to the DJAI procedure under GATT Arts. X:1 and X:3(a) and Arts. 1.3, 1.4(a), 1.6, 3.2, 3.3, 3.5(f), 5.1, 5.2, 5.3, and 5.4 of the Licensing Ag.

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1 Argentina – Measures Affecting the Importation of Goods