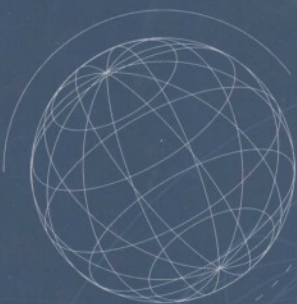




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Dispute Settlement Reports 2000
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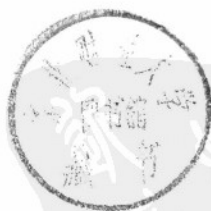
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THE WTO DISPUTE SETTLEMENT REPORTS

The *Dispute Settlement Reports* of the World Trade Organization (the "WTO") include panel and Appellate Body reports, as well as arbitration awards, in disputes concerning the rights and obligations of WTO Members under the provisions of the *Marrakesh Agreement Establishing the World Trade Organization*. The *Dispute Settlement Reports* are available in English, French and Spanish. Starting with 1999, the first volume of each year contains a cumulative index of published disputes.

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ARGENTINA- SAFEGUARD MEASURES ON IMPORTS OF FOOTWEAR

Report of the Panel

WT/DS121/R

*Adopted by the Dispute Settlement Body
on 12 January 2000*

as modified by the Appellate Body Report

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I. INTRODUCTION

1.1 On 3 April 1998, the European Communities requested consultations with the Government of Argentina under Article XXII:1 of the GATT 1994 ("GATT") and pursuant to Article 4 of the Understanding on Rules and Procedures Governing the

Settlement of Disputes ("DSU") and Article 14 of the Agreement on Safeguards with regard to provisional and definitive safeguard measures imposed by Argentina on imports of footwear.

1.2 The European Communities and Argentina held consultations on 24 April 1998, but failed to reach a mutually satisfactory solution.

1.3 On 10 June 1998, pursuant to Article 6 of the DSU, the European Communities requested the establishment of a panel with standard terms of reference.

1.4 At its meeting on 23 July 1998, the DSB established a panel pursuant to the request by the European Communities (WT/DS121/3).

1.5 At that DSB meeting, parties agreed that the Panel should have standard terms of reference. The terms of reference of the Panel are the following:

"To examine, in the light of the relevant provisions of the covered agreements cited by the European Communities in document WT/DS121/3, the matter referred to the DSB by the European Communities in that document and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements".

1.6 On 15 September 1998, the Panel was constituted as follows:

Chairman: Mr. John McNab

Members: Ms. Claudia Orozco

Ms. Laurence Wiedmer

1.7 Brazil, Indonesia, Paraguay, Uruguay and the United States reserved their rights to participate in the Panel proceedings as third parties.

1.8 The Panel met with the parties on 30 November – 1 December 1998 and 3 February 1999. It met with the third parties on 1 December 1998.

1.9 The Panel submitted its interim report to the parties on 21 April 1999. On 10 May 1999, both parties submitted comments on the interim report, and Argentina requested that an interim review meeting be held. On 20 May 1999, the Panel held the interim review meeting with the parties. The Panel submitted its final report to the parties on 4 June 1999.

II. FACTUAL ASPECTS

2.1 This dispute concerns the application of provisional and definitive safeguard measures on imports of footwear by Argentina. Following a request made on 26 October 1996 by the Argentine Chamber of the Footwear Industry (CIC) for the application of a safeguard measure on footwear, and pursuant to Resolution MEYOSP No. 226/97¹, a safeguard investigation on footwear was initiated. At the same time, a provisional measure was imposed. The opening of the safeguard investigation and the implementation of a provisional safeguard measure were notified to the Committee on Safeguards in a communication dated 21 February 1997.² In a communica-

¹ Published in the *Boletín Oficial* of 24 February 1997. The Resolution was adopted on 14 February 1997 and became effective on 25 February 1997.

² G/SG/N/6/ARG/1, G/SG/N/7/ARG/1, 25 February 1997, Exhibit EC-11.

tion dated 5 March 1997, a copy of Resolution 226/97 was transmitted to the Committee on Safeguards.³

2.2 On 25 July 1997 Argentina notified the Committee on Safeguards, pursuant to Article 12.1(b) of the Agreement on Safeguards, of the determination of serious injury made by the National Foreign Trade Commission ("CNCE").⁴ On 1 September 1997, Argentina notified the Committee on Safeguards of the intention of the Argentine authorities to impose a final safeguard measure under Article 12.1(c) and Article 9 (footnote 2) of the Agreement on Safeguards.⁵ Consultations between Argentina and the European Communities and the United States took place on 9 September 1997 pursuant to Article 12.3 of the Agreement on Safeguards.⁶

2.3 On 12 September 1997, Argentina published⁷ a definitive safeguard measure, under Resolution 987/97, in the form of minimum specific duties on certain imports of footwear identified in Annex I of the Resolution, effective as of 13 September 1997. On 26 September 1997, Argentina transmitted to the Committee on Safeguards a copy of Resolution 987/97.⁸ In a communication dated 26 September 1997, Uruguay, as Pro Tempore President of MERCOSUR⁹ and on behalf of Argentina, notified under Article 12.1(c) and footnote 2 to Article 9 the definitive safeguard measure imposed by Resolution MEYOSP 987/97.¹⁰

2.4 On 31 December 1993, Resolution n° 1696/93 of the Argentine Ministry of Economy, Public Works and Public Services had introduced minimum specific duties on certain footwear imported into Argentina.¹¹ On the date of their original intended expiry (31 December 1994), the minimum specific duties were extended for one year by Article 15 and Annex XII of Decree 2275/94¹². They were again prolonged until 31 December 1996 by Article 9 of Decree 998/95¹³ and then until 31 August 1997 by Resolution 23/97 of 7 January 1997.¹⁴ Various amendments were also made to the duties over the period.¹⁵ Argentina adopted a Resolution repealing

³ G/SG/N/6/ARG/1/Suppl.1 and G/SG/N/7/ARG/1/Suppl.1, 18 March 1997, Exhibit EC-12.

⁴ G/SG/N/8/ARG/1, Exhibit EC-16.

⁵ G/SG/N/10/ARG/1, G/SG/N/10/ARG/1, 15 September 1997, Exhibit EC-17, with corrigendum dated 18 September 1998, Exhibit EC-18.

⁶ In accordance with Article 12.5 of the Agreement on Safeguards, the results of the consultations were notified to the Committee in a communication dated 10 September 1997, G/SG/14/G/L/195.

⁷ *Boletín Oficial*, No. 28,729, 12 September 1997.

⁸ G/SG/N/10/ARG/1/Suppl.1, G/SG/N/11/ARG/1/Suppl.1, 10 October 1997, Exhibit EC-20.

⁹ The Southern Common Market (MERCOSUR) was formed on 26 March 1991, when four Latin American countries (Argentina, Brazil, Paraguay and Uruguay) signed a treaty in Asunción, providing for the creation of a common market among the four participants.

¹⁰ G/SG/N/10/ARG/1/Suppl.2, G/SG/N/11/ARG/1/Suppl.2, G/SG/14/Suppl.1 and G/L/195/Suppl.1, 22 October 1997.

¹¹ Exhibit EC-1. The Resolution is dated 28 December 1993 and published in the Official Journal of the Argentine Republic of 30 December 1993, to enter into force the next day.

¹² Exhibit EC-2. Published in the Official Journal of the Argentine Republic of 30 December 1994, to enter into force on 1 January 1995.

¹³ Exhibit EC-3.

¹⁴ Exhibit EC-4.

¹⁵ Similar minimum specific duties also applied to textiles and clothing. The minimum specific duties on textiles and clothing were the subject of WTO complaints by the United States (WT/DS56) and the European Communities (WT/DS77). The Panel in those disputes excluded minimum specific

the minimum specific duties on imports of footwear¹⁶ on 14 February 1997, the same day that Argentina adopted Resolution MEYOSP 226/97¹⁷, referred to above, initiating the safeguard proceedings and imposing provisional measures in the form of minimum specific duties on imports of footwear.

2.5 On 28 April 1998, Argentina published Resolution 512/98¹⁸ modifying Resolution 987/97.

2.6 On 26 November 1998, Argentina published MEYOSP Resolution 1506/98¹⁹, further modifying Resolution 987/97. On 7 December 1998, Argentina published SICyM Resolution 837/98²⁰, implementing Resolution 1506/98.

III. FINDINGS AND RECOMMENDATIONS REQUESTED BY THE PARTIES

3.1 The European Communities requests the Panel to find that "Argentina has violated Articles 2:1, 4:2(a), 4:2(b), 4:2(c), 5:1, 6, 12:1 and 12:2 Agreement on Safeguard[s] and Article XIX:1(a) of GATT 1994."

3.2 The European Communities argues that:

"All of the above violations, except for the violation of Article 5:1, relate to the way in which the investigation was conducted or the way in which procedural obligations were carried out by Argentina. Accordingly, any change to the measure which Argentina may introduce will only affect the violation of Article 5:1 (necessity of the measure and adequacy of the adjustment plan) and not the remaining violations."

"Accordingly, the EC submits that Argentina's safeguard measures on imported footwear, however they may be adapted or adjusted in the meantime, should be removed."

3.3 In particular, "[b]ecause of the continued changes in the safeguard measures, the European Communities requests the Panel to find all Argentine measures based on the safeguard investigation subject of this dispute to be contrary to Argentine WTO obligations."

3.4 Argentina requests the Panel:

- (a) "to give consideration to the issues of procedure raised in its first written submission" (section IV.A). First, Argentina "[does] not consider that the DIEMs applied to footwear and now revoked should be discussed by the Panel. [Argentina] therefore respectfully request the Panel not to take into account any of the claims made by the EC in this respect". Second, "Argentina respectfully requests the Panel not to make any ruling on Resolution 512/98, which was never the subject of

duties on footwear from its examination because these had been eliminated before the panel was formed.

¹⁶ Resolution 225/97, Exhibit EC-5.

¹⁷ Exhibit EC-6.

¹⁸ Exhibit EC-28.

¹⁹ Exhibit EC-32.

²⁰ Exhibit EC-35.

consultations between the European Communities and Argentina and is not included in the terms of reference which the DSB adopted for the Panel's proceedings, although these were the subject of detailed discussions at two consecutive meetings of the DSB";

- (b) "to reject the EC's request for a preventive ruling by the Panel on any change that Argentina might make to the measure";
- (c) "to reject the request that the panel "find" that Argentina, in conducting its investigation, has failed to comply with the different provisions that the EC claims to have been violated, in particular its obligations under Articles 2.1, 4.2(a), 4.2(b), 4.2(c), 6, 12.1 and 12.2 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994";
- (d) "to reject the EC's request that any change to the measure which Argentina may introduce only affect the alleged violation of Article 5.1 and not the remaining alleged violations";
- (e) "to reject the EC's request that the Panel "recommend" that however the measure may be adjusted, it should be removed."

IV. PROCEDURAL ISSUES AND REQUESTS FOR PRELIMINARY RULINGS²¹

A. *Argentina's Requests Regarding the Panel's Terms of Reference*

1. *Minimum Specific Import Duties (DIEMS)*

- (a) The European Communities' Account of the "Factual and Procedural History" of the Dispute

4.1 As part of its description of the "factual and procedural history" of this dispute, the European Communities asserts the following:

On 31 December 1993 Resolution n° 1696/93 of the Argentine Ministry of Economy, Public Works and Public Services introduced minimum specific duties on certain footwear imported into Argentina²². The text of this Resolution is annexed as Exhibit EC-1. The justification given for this measure in the first Preamble was the low price of certain imports and the resulting injury caused to the Argentine industry. It was stated to be of a temporary nature and to be linked to an investment plan for the adjustment and specialization of the industry. Indeed, Article 6 of the measure specified that the minimum specific duties were to expire on 31 December 1994 and that there was a "possibility of a single non-renewable extension of six months" provided that the injury persisted and the adjustment justified it.

²¹ Except as otherwise noted, the footnotes and citations, and the emphasis in the text are as contained in the parties' submissions.

²² The Resolution is dated 28 December 1993 and published in the Official Journal of the Argentine Republic of 30 December 1993, to enter into force the next day.

However, the protection proved easier to introduce than to remove and the duties have in effect been in force ever since. On the date of their original intended expiry and on the eve of the entry into force of the WTO Agreements, they were extended for one year by Article 15 and Annex XII of Decree 2275/94²³ (Exhibit EC-2). They were again prolonged until 31 December 1996 by Article 9 of Decree 998/95 (Exhibit EC-3) and then again prolonged until 31 August 1997 by Resolution 23/97 of 7 January 1997 (Exhibit EC-4). Various amendments were also made to the duties over the period.

Similar minimum specific duties also applied to textiles and apparel. They were all in principle calculated by multiplying a "representative international price" by the applicable *ad valorem* customs duty²⁴. A minimum specific duty became payable where its application resulted in a duty higher than would have resulted from the application of the applicable *ad valorem* customs duty (in principle for all goods priced below the "representative international price"). The levels of specific duties which were reached, surpassed in certain cases 200 per cent *ad valorem* equivalent, clearly breaching Argentina's bound rate of 35 per cent *ad valorem*, provided in Argentina's Schedule LXIV. In effect, Argentina was applying a safeguard measure without following any of the required procedures laid down in the WTO Agreement applicable after 1 January 1995.

The regime of minimum specific duties applied by Argentina did not fail to provoke international protests and both the EC and the US commenced dispute settlement proceedings. The US requested consultations on 4 October 1996 (WT/DS56) which gave rise to the Panel and Appellate Body Reports *Argentina - Certain Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*²⁵. The European Communities, which was a third party in the US proceeding, requested its own Panel under Article 10.4 Dispute Settlement Understanding (DSU) on 10 September 1997 (WT/DS77). This gave rise to a Panel proceeding *Argentina - Measures Affecting Textiles and Clothing*, which is currently suspended.

When it became clear that the Panel requested by the US would be established, Argentina repealed the minimum specific duties on imports of footwear while maintaining such duties on imports of clothing and textiles (Resolution 225/97 -Exhibit EC-5) and simultaneously initiated safeguard proceedings and imposed provisional meas-

²³ Published in the Official Journal of the Argentine Republic of 30 December 1994, to enter into force on 1 January 1995.

²⁴ See the description of the system given at paragraph 6.18 of the Report of the Panel and 49 of the Appellate Body Report in *Argentina - Certain Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items* referred to below.

²⁵ WT/DS56/R, adopted 22 April 1998, DSR 1998:III, 1033, confirmed and partially modified on Appeal - WT/DS56/AB/R and WT/DS56/AB/R Corr.1 of adopted 22 April 1998, (AB-1998-1), DSR 1998:III, 1003.