

**ARGENTINA – SAFEGUARD MEASURES ON
IMPORTS OF FOOTWEAR**

Notification of an Appeal by India under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 15 September 1999, sent by Argentina to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

In accordance with paragraph 4 of Article 16 of the Dispute Settlement Understanding (DSU) and Rule 20 of the Working Procedures for Appellate Review, the Argentine Republic notifies the Appellate Body of the WTO of its decision to appeal certain matters of law addressed in the Panel Report for the case "Argentina – Safeguard Measures Imposed on Imports of Footwear" (WT/DS121/R), as well as certain legal interpretations formulated by the Panel.

The legal interpretations and errors of law made by the Panel, and which Argentina requests the Appellate Body to review, are the following:

I. Jurisdictional Issues

1. The Panel erred as a matter of law in evaluating the "*findings and conclusions.... of facts and law*" of the Argentine authority in Acta 338 with respect to increased imports, serious injury and causation determinations, when the EC never alleged any claims of violation of Article 3 of the Safeguards Agreement in its Request for the Establishment of the Panel, and subsequently in the terms of reference established by the Dispute Settlement Body.

II. The Imposition of Measures in the Case of a Customs Union

2. The Panel erred in its legal interpretation of Article 2 of the Safeguards Agreement, the footnote to Article 2 of the Safeguards Agreement and Article XXIV of GATT 1994 in concluding that Argentina, having taken into account Mercosur imports for the injury determination, could not exclude Mercosur countries from the application of the measures. Specifically, the Panel erred in its findings and legal interpretations with respect to Article 2 by stating that the injury analysis and the imposition of measures were not separate determinations, and by imposing a "parallelism" requirement not found in the Safeguards Agreement. The Panel also erred with respect to its interpretation of footnote 1 of the Safeguards Agreement and its analysis of the relationship of Article 2, its footnote and Article XXIV of the GATT 1994 with a Customs Union Agreement, on the issue of Argentina's rights to exempt Mercosur countries from the measure. Consequently, the Panel departed from the obligation established in Article 3.2 of the Dispute Settlement Understanding

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(DSU), ..."*Recommendations and rulings of the DSB cannot add or diminish the rights and obligations provided in the covered agreements*".

III. Serious Injury and Causation

A. Panel's Standard of Review

3. The Panel erred as a matter of law in its application of the proper standard of review by imposing, *de facto*, a *de novo* standard of review and by impermissibly interpreting that the object and purpose of the Safeguards Agreement imposed a stricter standard of review.

4. The Panel erred as a matter of law in not exercising its authority in accordance with Article 3.2 of the DSU which provides that: "...*Recommendations and rulings of the DSB cannot add or diminish the rights and obligations provided in the covered agreements*". The Panel's interpretation of the Argentine authorities' evaluation of "increased imports", "all relevant factors", "serious injury" and "causation" exceeded its authority under Article 3.2 of the DSU.

5. The Panel did not make an objective assessment of the matter before it in accordance with Article 11 of the DSU and Article 12.7 of the DSU. The term "objective" implies not just an intent standard of "good faith" but also the requirement that the effect must be that the decision follows logically from the evidence. A decision can be subjective and thus not objective without being biased in a moral sense. The requirement in Article 12.7 supports this interpretation.

A-1 . Increased Imports

6. The Panel erred as a matter of law in its findings that Argentina had not properly proved "increased imports" in accordance with Article 2 and Article 4 of the Safeguards Agreement.

A-2 . Causation

7. The Panel erred as a matter of law in its conclusion that Argentina's causation determination and consideration of "other factors" was not made in accordance with the Safeguards Agreement requirements in Article 4.

8. The Panel erred as a matter of law in interpreting the terms "under such conditions" in Article 2 and imposing on Argentina additional obligations not found in the Safeguards Agreement.

A-3 . Serious Injury

9. The Panel erred in its legal findings based on Articles 2 and 4 of the Safeguards Agreement with respect to Argentina's serious injury determination. The Panel erred in its legal interpretation of Article 4 with respect to provisions related to the serious injury determination.
