

ARGENTINA – SAFEGUARD MEASURES ON IMPORTS OF FOOTWEAR

Request for the Establishment of a Panel by Indonesia

The following communication, dated 15 April 1999, from the Permanent Mission of Indonesia to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon instruction from my government, I have the honor to request the establishment of a panel pursuant to Article XXIII of the General Agreement on Tariffs and Trade (GATT 1994), Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article 14 of the Agreement on Safeguards, with regard to the provisional and the definitive safeguard measures imposed (and subsequently modified) by Argentina on imports of footwear.

Under Resolution 226/97, published in the Official Journal of the Argentine Republic No. 28592 on 24 February 1997, Argentina imposed a provisional safeguard measure in the form of minimum specific duties on imports of footwear effective as of 25 February 1997. By letter dated 25 July 1997, the Permanent Mission of Argentina notified the World Trade Organization of the determination of serious injury made by the National Foreign Trade Commission (CNCE) on 25 June 1997 in the investigation into footwear imports being carried out in the Argentine Republic. The report approved by the CNCE was circulated on 21 August 1997 to WTO Members as part of the notification designated as G/SG/N/8/ARG/1. Under Resolution 987/97, published in the Official Journal of the Argentine Republic No. 28729 on 12 September 1997, Argentina imposed a definitive safeguard measure in the form of minimum specific duties on imports of footwear effective as of 13 September 1997.

In November 1998, Argentina adopted Resolution 1506, followed by the issuance of Decision 837/98 dated 4 December 1998, which modified Resolution 987/97 and imposed a tariff-rate quota (TRQ) on footwear imports in addition to the safeguard duties previously imposed. Moreover, Resolution 1506 postpones any liberalization of the original safeguard duty until 25 February 2000, and liberalizes the TRQ only once during the life of the measure. Argentina has not notified this measure to the Committee on Safeguards.

On 22 April 1998, Indonesia requested consultations with Argentina with a view to reaching a mutually satisfactory solution of the matter. The request was circulated in document WT/DS123/1 dated 27 April 1998. Consultations were held on 21 May and 7-8 September 1998 in Geneva, but did not lead to a satisfactory resolution of the matter. On 18 December 1998, Indonesia requested supplemental consultations with Argentina regarding the TRQ that Argentina had imposed in November 1998. The request was circulated in WT/DS123/1/Add.1 dated 11 January 1999. These consultations were held on 11 January and 2 February 1999 in Geneva, and also have not led to a satisfactory resolution of the matter.

Therefore, Indonesia requests that the panel consider and find that these measures, as well as any other measure based upon the determination of serious injury notified by Argentina in G/SG/N/8/ARG/1, are in breach of Argentina's obligations under the provisions of the Agreement on Safeguards, in particular, but not necessarily exclusively, of Article 2, including footnote 1 thereto (especially the requirement of determining in an investigation that certain conditions are present and the non-discrimination obligation), Article 4 (in particular that all relevant factors must be investigated and to demonstrate the existence of a causal link), Article 5 (especially the condition that measures must only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment), Article 6 (in particular the requirement of evidence of "critical circumstances"), Article 7 (which mandates that safeguard measures over one year in duration be progressively liberalized at regular intervals) and Article 12 (especially the notification obligations) of the said Agreement, and in violation of Article XIX of GATT 1994 (in particular the lack of "unforeseen developments").

Indonesia requests that the panel be established with the standard terms of reference.

Indonesia asks that this request be placed on the agenda for the next meeting of the Dispute Settlement Body.
