

**NOTIFICATION UNDER ARTICLE 12.1(A) OF THE AGREEMENT ON
SAFEGUARDS ON INITIATION OF AN INVESTIGATION AND
THE REASONS FOR IT**

**NOTIFICATION UNDER ARTICLE 12.4 OF THE AGREEMENT ON
SAFEGUARDS BEFORE TAKING A PROVISIONAL SAFEGUARD
MEASURE REFERRED TO IN ARTICLE 6**

Questions Posed by the EUROPEAN COMMUNITIES
Regarding the Notifications of ARGENTINA¹

The following communication, dated 21 May 2001, has been received from the Permanent Delegation of the European Commission.

- Notifications concerning Canned Peaches

A. ON THE MEASURE

1. In accordance with the Agreement on Safeguards ("SA"), safeguard measures shall only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. On which grounds did the Ministry of the Economy determine the level of the provisional measure imposed?

2. How did the Argentinean authorities ensure that the provisional measure was no more restrictive than necessary to prevent or remedy serious injury and to facilitate adjustment? How did the Argentinean authorities ensure that the provisional measure fulfils the criteria of proportionality?

3. On 21 February 1996, Argentina imposed a 5 year definitive countervailing duty on imports of canned peaches from the EU. On 8 January 2001, Argentina self-initiated a review of the measures in force. In how far did the Argentinean authorities consider the existence and the level of these countervailing measures in force, when setting the level of the provisional safeguard measure? What is the opinion of the Argentinean authorities as to the relationship of the countervailing measures and the provisional safeguard measures in force? Would Argentina agree that the two measures will eventually remedy, at least partly, to the same injury?

4. Do the Argentinean authorities not consider that the simultaneous application of countervailing and provisional safeguard measures allows a "double" relief to Argentinean producers, which may be in breach of WTO-rules?

¹ G/SG/N/6/ARG/4+ Suppl.1 + Suppl.2, G/SG/N/7/ARG/2 + Suppl.1 + Suppl.2.

5. Could the Argentinean authorities clarify the number and types and level of tariffs and other restrictions currently in force in Argentina concerning imports of canned peaches? What is the exact level of the applied custom tariff on these products today?

6. Would Argentina agree that its recent decision to increase applied tariff up to WTO bound levels for a number of goods, including canned peaches has increased the level of protection for Argentine producers well beyond what was deemed to be necessary when introducing the provisional safeguard measure? Would Argentina agree that provisional measures need to be reduced in order to ensure that they are limited to the strict necessary?

B. ON UNFORESEEN DEVELOPMENTS

7. Did the Argentinean authorities evaluate whether the increased imports alleged to be causing serious injury were due to “unforeseen developments” and “tariff concessions or the effect of other obligations” as provided by Article XIX GATT? If yes, could details be provided?

C. ON IMPORTS AND MARKET SHARES

8. In accordance with the notification made under Article 12.1(a) SA on initiation of an investigation and the reasons for it, dated 15 January 2001, the Argentinean authorities based their determination of the increase of import volume of canned peaches on estimates. Could the Argentinean authorities provide details of the basis on which these estimates were made?

9. Did the Argentinean authorities, when evaluating the increase of imports take into account trends of former years (1995-2000)? If so, in how? Could details be provided?

10. To what extent, did the Argentinean authorities consider the fact that in 1997/1998, imports of canned peaches decreased dramatically due to unfavourable climatic conditions in the Northern hemisphere (frost)? Do the Argentinean authorities consider that the period 1998 to 2000 is sufficiently representative and why?

11. As far as the relationship of the imports to domestic production is concerned, on which grounds did the Argentinean authorities establish that there was an increase justifying the preliminary finding of serious injury? Did the Argentinean authorities take due account of the increasing domestic consumption and domestic production of canned peaches during the period concerned when establishing the increase of imports in relation to the domestic production? If yes, could details be provided?

12. Are the conclusions of the Argentinean authorities based on an imminent increase of imports? If so, could the Argentinean authorities explain which provision of the SA would allow such a methodology to be taken into account?

D. ON SERIOUS INJURY AND THREAT OF SERIOUS INJURY

13. Based on the technical report of the Comisión Nacional de Comercio Exterior, injury factors such as production, domestic sales volume and value, capacity and capacity utilization and employment show increasing, (i.e. positive trends). Other injury factors, such as export sales volume and value, productivity and profitability do not indicate any significant decline of the domestic industry. These factors remained rather stable during the period analyzed. Given that from such an examination “serious injury” or threat of injury can be established on what grounds did the Argentinean authorities establish injury or a threat of serious injury and why?

14. Given that most of the data related to the year 2000 is based on estimates, how did the Argentinean authorities ensure that the determination of the existence of a threat of serious injury was based on facts, as required by Article 4.1.(b) SA?

15. On what grounds did the Argentinean authorities base their estimates?

16. As regards the determination of threat of serious injury, the Argentinean authorities argue as follows (WTO (G/SG/N/6/ARG/4 and G/SG/N/7/ARG/2 of 18 January 2001, pages 5 and 6):

«Since imports of canned peaches increased in a manner capable of producing serious injury or threat of injury to the domestic industry, while net domestic production of exports has nevertheless maintained its share of current consumption, this had been accompanied by a fall in sale prices, which have reached the level of the representative unit cost of the sector.

The foregoing, taken in conjunction with the estimated volume of stocks at the end of the 2000 period, especially in the countries of the European Union, plus an apparent discrimination in prices towards Argentina on the part of the chief EU producer – Greece, creates a situation which may be regarded as constituting a threat of injury caused by imports.» [emphasis added]

Considering the requirements set by the SA, how do the Argentinean authorities ensure that Article 4.1(b) SA has been fully respected?

17. To what extent did the Argentinean authorities take into account the defining share of imports was a percent of domestic production? Did the Argentinean authorities observe a decline of the domestic product in the market share? If yes, what were the conclusions?

18. Did the Argentinean authorities evaluate the available domestic stocks of canned peaches during the period between 1995 and 2000? If yes, what were the conclusions?

19. Did the Argentinean authorities evaluate whether the alleged decrease of import prices had impacted on Argentinean producers? If yes, what were the conclusions and could details of the evaluation be provided?

20. Have the Argentinean authorities evaluated the reasons for the alleged decrease in import prices? If yes, what were the conclusions and could details of the evaluation be provided?

21. On what grounds was it established that the increase of world-wide production and exports have an impact on the Argentinean domestic industry? Do the Argentinean authorities have information that imports from the rest of the world are en route to Argentina or otherwise destined for Argentina? If yes, could this information be provided?

22. Did the Argentinean authorities take into consideration all other factors, which are relevant to the situation of the domestic industry and which are not expressly listed in Article 4.2.(a) of the Agreements on Safeguards? If yes, could details of the analyses made be provided?

23. According to our information, heavy investments have been made in Mendoza, the region where the quasi totality of domestic production of canned peaches takes place. As a consequence, the production capacity is expected to increase significantly, i.e. to double. Could the Argentinean authorities provide the European Commission with details of the investments made and the resulting increased production capacity?

24. Do the Argentinean authorities consider that an increase of production capacity of this nature can be considered as an “adjustment” in the meaning of Article 5 SA?

E. ON CAUSATION

25. How did the Argentinean authorities ensure that the alleged threat of serious injury was all caused or mainly all caused by the imports of canned peaches?

26. Did the Argentinean authorities evaluate other factors which might have caused injury to the domestic industry? Did the Argentinean authorities analyse the relationship between the movements in imports and the movements in injury factors? And finally, did the Argentinean authorities evaluate the effect of the each factor on the situation of the domestic industry? If yes, what were the conclusions and could details of these evaluations be provided?

27. If other factors have been causing injury to the domestic industry, how did the Argentinean authorities ensure that these were not attributed to the imports under consideration?

28. Did the Argentinean authorities proceed to an evaluation of the conditions of competition between the imports and the domestic product? If so, could details be provided?

29. Do the Argentinean authorities not believe that increased competition between domestic producers, due to a significant increase in capacity, could be a factor causing injury or threat of injury?

F. ON CRITICAL CIRCUMSTANCES

30. Does Argentina agree that a determination on the existence of “critical circumstances” under Article 6 SA must meet a much higher standard than a determination of actual injury or threat under Article 2.1 SA?

31. The Argentinean authorities appear to base their determination on a threat of injury in view, in particular, of an imminent increase in imports. The European Commission regards this as a low degree of emergency. How do the Argentinean authorities reconcile this finding with the application of a provisional safeguard measure, which requires that critical circumstances have to exist?

32. Which circumstances did the Argentinean authorities consider “critical” in the meaning of Article 6 SA?

33. Did the Argentinean authorities evaluate how far a delay in imposing provisional measures would cause damage which would be difficult to repair in the meaning of Article 6 SA? Was Argentina able to estimate the expected amount of such damage and why it would be difficult for domestic producers to repair it if imports were not cut off completely as from January 2001? Could details be provided?

34. Does Argentina consider that, leaving aside the factual circumstances of this case, “critical circumstances” can exist (i.e. “where delay would cause damage which it would be difficult to repair”) in case of a threat of injury? Or should critical circumstances normally only be found when actual injury is already present? Could Argentina elaborate on this point?
