

In dieser Schriftenreihe veröffentlichten Andrés Musacchio (Buenos Aires) und Ulrich Schüle (Mainz) Forschungsergebnisse und Konferenzbeiträge zu Fragen der Wirtschaftspolitik und des Management im deutsch-argentinischen Kontext. Die Veröffentlichungsreihe dient in erster Linie als Forum für junge Forscher der im Rahmen vom Deutsch-Argentinischen Hochschulzentrum geförderten Hochschulpartnerschaften zwischen der Universidad de Ciencias Empresariales y Sociales (UCES) in Buenos Aires und der Hochschule Mainz, der Universidad Nacional del Litoral in Santa Fé und der Hochschule Kaiserslautern sowie der Universidad Nacional de Tucumán und der Hochschule Biberach. Sie bietet zudem Raum für Veröffentlichungen aus anderen Projekten zu deutsch-argentinischen Wirtschaftsfragen.

En esta serie, Andrés Musacchio (Buenos Aires) y Ulrich Schüle (Mainz) publican los resultados de varias investigaciones y ponencias sobre distintos aspectos de la política económica y de la gestión de empresas en el contexto argentino-alemán. La serie sirve, principalmente, como foro para los jóvenes investigadores de los consorcios universitarios binacionales promovidos por el Centro Universitario Argentino-Alemán (CUAA); en particular, los consorcios entre la Universidad de Ciencias Empresariales y Sociales (UCES) en Buenos Aires y la Hochschule Mainz, entre la Universidad Nacional del Litoral, Santa Fé, y la Hochschule Kaiserslautern así como entre la Universidad Nacional de Tucumán y la Hochschule Biberach. Al mismo tiempo, ofrece un marco para la publicación de otros proyectos enfocados en aspectos económicos argentino-alemanes.

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DEUTSCH-ARGENTINISCHE  
WIRTSCHAFTSSTUDIEN

ESTUDIOS ECONÓMICOS  
ARGENTINO-ALEMANES

ULRICH SCHÜLE (ED.)

INTERNATIONAL TRADE, FINANCE, AND INVESTMENT  
POLICIES IN ARGENTINA

TRENDS AND ISSUES

SHAKER  
VERLAG

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**Prof. Dr. Andrés Musacchio**  
Universidad de Buenos Aires

Universidad de Ciencias Empresariales y Sociales (UCES), Buenos Aires

**Prof. Dr. Ulrich Schüle**  
Hochschule Mainz

**Wissenschaftlicher Beirat | Consejo Académico:**

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Prof. Hartmut Veigle, Hochschule Biberach

Prof. Dr. Ricardo Díaz, Universidad Nacional de Tucumán

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 Internet: [www.shaker.de](http://www.shaker.de) • e-mail: [info@shaker.de](mailto:info@shaker.de)

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## ARGENTINA AND DISPUTE SETTLEMENT IN THE WTO CONTEXT

Viviana Kluger

The World Trade Organization (WTO) is a global international organization dealing with the rules of trade between nations. These rules affect domestic producers, importers and exporters.

The legal context of the WTO is given by the *agreements*, a set of legal texts whose coverage ranges from the establishment of broad principles<sup>1</sup>—which run throughout all the agreements—to the regulation of trade issues connected with agriculture,<sup>2</sup> textiles and clothing,<sup>3</sup> banking, telecommunications,<sup>4</sup> government purchases,<sup>5</sup> industrial standards and product safety,<sup>6</sup> food sanitation regulations,<sup>7</sup> intellectual property,<sup>8</sup> etc., and also the settlement of disputes at the WTO.<sup>9</sup>

Within the context of the WTO agreements, a dispute can arise when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members consider to be a breach of the WTO agreements, or a failure to live up to obligations. A third group

<sup>1</sup> General Agreement on Tariffs and Trade 1994, [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#General](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#General)

<sup>2</sup> Agreement on Agriculture, [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#aAgreement](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#aAgreement)

<sup>3</sup> Agreement on Textiles and Clothing, [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#cAgreement](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#cAgreement)

<sup>4</sup> General Agreement on Trade in Services, [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#mAgreement](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#mAgreement)

<sup>5</sup> Agreement on Government Procurement, [http://www.wto.org/english/docs\\_e/legal\\_e/gpr-94\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm)

<sup>6</sup> Agreement on Technical Barriers to Trade, [http://www.wto.org/english/docs\\_e/legal\\_e/tbt\\_e.htm](http://www.wto.org/english/docs_e/legal_e/tbt_e.htm)

<sup>7</sup> Agreement on the Application of Sanitary and Phytosanitary Measures, [http://www.wto.org/english/docs\\_e/legal\\_e/15sps\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm)

<sup>8</sup> Trade-Related Aspects of Intellectual Property Rights (TRIPS), [http://www.wto.org/english/docs\\_e/legal\\_e/legat\\_e.htm#GATT94](http://www.wto.org/english/docs_e/legal_e/legat_e.htm#GATT94)

<sup>9</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), [http://www.wto.org/english/docs\\_e/legal\\_e/28-dsu\\_e.htm](http://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm)

of countries can declare that they have an interest in the case and enjoy some rights.<sup>10</sup> As a consequence, WTO members can take part in the procedure as complainants, respondents or third parties.<sup>11</sup>

In the following, the dispute settlement procedure will be briefly explained before Argentina's most important cases are discussed. In a first part, cases are presented in which Argentina acted as respondent; in a second part, cases with Argentina as complainant are examined. In the conclusion, some trends how Argentina uses the WTO dispute settlement as a tool or trade policy, are shown.

#### THE DISPUTE SETTLEMENT PROCEDURE

As stated by former director-general Pascal Lamy, the dispute settlement procedure is "the jewel in the WTO's crown",<sup>12</sup> as it is considered the central pillar of the multilateral trading system. Settling differences by talking and by agreeing on rules is vital for reducing tension and is the WTO's unique contribution to the stability of the global economy (Palmer 2014).<sup>13</sup>

The first stage of the procedure, called "consultation", consists of a series of talks designed to have the Parties settle their differences by themselves.<sup>14</sup> If that fails, the Parties can also ask the WTO director-general to mediate or try to help in some other way. If consultations cannot settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining Party may request the establishment of a panel.<sup>15</sup> This leads to the second stage of the procedure.<sup>16</sup>

The Dispute Settlement Body (DSB), which is composed by all WTO members, is the organ vested with the sole authority to establish "panels" of experts to consider the case, and to accept or reject the panels' findings or the results of an appeal.<sup>17</sup>

<sup>10</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/displ\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/displ_e.htm)

<sup>11</sup> DSU, Art. 10

<sup>12</sup> [http://www.wto.org/english/news\\_e/pres09\\_e/pr578\\_e.htm](http://www.wto.org/english/news_e/pres09_e/pr578_e.htm)

<sup>13</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/t10hi02\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/t10hi02_e.htm)

<sup>14</sup> DSU, Art. 4

<sup>15</sup> DSU, Art. 4.7

<sup>16</sup> DSU, Art. 6

<sup>17</sup> DSU, Art. 6, Art. 17.14

The panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of, and conformity with, the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements.<sup>18</sup>

Officially, the panel helps the DSB to make rulings or recommendations, but in fact its conclusions are difficult to overturn as the panel's report can only be rejected by consensus in the DSB.<sup>19</sup> The panel's findings have to be based on the agreements cited.<sup>20</sup>

The panel's final report should normally be given to the parties to the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.<sup>21</sup>

Either side can appeal a panel's ruling before the Appellate Body. Appeals must be based on points of law such as legal interpretation—there is no re-examination of existing evidence or new issues.<sup>22</sup> The Appellate Body can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days.<sup>23</sup>

The DSB has to accept or reject the appeals report within 30 days—rejection is only possible by consensus.<sup>24</sup> The DSB then monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.<sup>25</sup>

During the first sixteen years of WTO operation, 453 requests for consultations have been accepted. It should be noted that cases submitted by an individual country count as one case.

<sup>18</sup> DSU, Art. 11

<sup>19</sup> DSU, Art. 16.4

<sup>20</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/displ\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/displ_e.htm)

<sup>21</sup> DSU, Art. 12.8

<sup>22</sup> DSU, Art. 17.6

<sup>23</sup> DSU, Art. 17.13

<sup>24</sup> DSU, Art. 17.14

<sup>25</sup> DSU, Art. 22

The DSB has established 185 panels for 231 disputes and those 185 panels gave rise to a total of 91 appeals<sup>26</sup>.

With respect to member participation, 258 requests were made by developed countries (57%), while 194 were initiated by developing countries (43%). On the defending side, developed countries have faced 247 challenges (58%) while 178 were placed against developing countries (43%).<sup>27</sup>

With 107 requests, the United States is the member that has been the most active as a complainant, while the EU has filed 91 requests.<sup>28</sup>

As to Latin American member participation, Brazil, Mexico and Argentina are among the top ten users of the dispute settlement process, both as complainants and respondents. This is illustrated in the table below.

| Complainant | Number of disputes | Respondent | Number of disputes |
|-------------|--------------------|------------|--------------------|
| USA         | 107                | USA        | 121                |
| EU          | 91                 | EU         | 78                 |
| Canada      | 33                 | China      | 31                 |
| Brazil      | 26                 | India      | 22                 |
| Mexico      | 23                 | Argentina  | 22                 |
| India       | 21                 | Canada     | 17                 |
| Argentina   | 20                 | Brazil     | 15                 |
| Japan       | 19                 | Japan      | 15                 |
| Korea       | 16                 | Australia  | 15                 |
| Thailand    | 13                 | Mexico     | 14                 |
| China       | 12                 | Korea      | 14                 |
| Chile       | 10                 | Chile      | 13                 |
| Australia   | 7                  | Thailand   | 3                  |

Source: [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

<sup>26</sup> [http://wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

<sup>27</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

<sup>28</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

## ARGENTINA IN THE WTO DISPUTE SETTLEMENT CONTEXT

The Argentine Republic has been an active user of the WTO Dispute Settlement mechanism both as a complainant and a respondent. It has participated in 20 cases as a complainant,<sup>29</sup> 22 as a respondent<sup>30</sup> and 48 as a third party.<sup>31</sup>

According to Valentina Delich, Argentina's participation in the WTO Dispute Settlement mechanism has varied throughout time. There is a first period running between 1995 and 2002, during which Argentina participated mostly as a respondent; a second period, which runs between 2003 and 2011 that the author calls *free of claims* and a third period, starting in 2012, in which Argentina has acted both as a complainant and a respondent (Delich 2013).

As a complainant, Argentina has filed requests against Latin American and European Members such as Brazil (one case),<sup>32</sup> Chile (six cases),<sup>33</sup> the European Union-former European Communities (six cases),<sup>34</sup> Hungary (one case),<sup>35</sup> Peru (one case),<sup>36</sup> and also against the United States (five cases).<sup>37</sup>

<sup>29</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

<sup>30</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

<sup>31</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

<sup>32</sup> Brazil — Anti-dumping Measures on Imports of Certain Resins from Argentina (DS355).

<sup>33</sup> Chile — Price Band System and Safeguard Measures Relating to Certain Agricultural Products (DS207); Chile — Provisional Safeguard Measure on Mixtures of Edible Oils (DS226); Chile — Definitive Safeguard Measure on Imports of Fructose (DS278); Chile — Provisional Safeguard Measure on Certain Milk Products (DS351); Chile — Definitive Safeguard Measures on Certain Milk Products (DS356); Chile — Anti-Dumping Measures on Imports of Wheat Flour from Argentina (DS393).

<sup>34</sup> European Communities — Measures Affecting Imports of Wine (DS263); European Communities — Measures Affecting the Approval and Marketing of Biotech Products (DS293); European Communities — Measures Affecting the Approval and Marketing of Biotech Products (DS293); European Communities — Measures Affecting the Tariff Quota for Fresh or Chilled Garlic (DS349); European Union and a Member State — Certain Measures Concerning the Importation of Biodiesels (DS443); European Union — Anti-Dumping Measures on Biodiesel from Argentina (DS473); European Union and Certain Member States — Certain Measures on the Importation and Marketing of Biodiesel and Measures Supporting the Biodiesel Industry (DS459).

<sup>35</sup> Hungary — Agricultural Products (DS35)

<sup>36</sup> Peru — Provisional Anti-Dumping Duties on Vegetable Oils from Argentina (DS272)

As a respondent, Argentina has faced 22 cases, lodged not only by Latin American and European Members, but also by Asian Members. These cases were filed by Brazil (two cases),<sup>38</sup> Chile (one case),<sup>39</sup> the European Union-formerly European Communities (eight cases),<sup>40</sup> India (one case),<sup>41</sup> Indonesia (one case),<sup>42</sup> Japan (one case),<sup>43</sup> Mexico (one case),<sup>44</sup> Panama (one case),<sup>45</sup> Peru (one case)<sup>46</sup> and the United States (five cases).<sup>47</sup> Argentina also participated as a third party in 48 cases.<sup>48</sup>

37 United States — Tariff Rate Quota for Imports of Groundnuts (DS111/2); United States — Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (DS268/26); United States — Anti-Dumping Administrative Review on Oil Country Tubular Goods from Argentina (DS346); United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina (DS447); United States — Measures Affecting the Importation of Fresh Lemons (DS448); [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

38 Argentina — Transitional Safeguard Measures on Certain Imports of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil (DS190); Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil (DS241).

39 Argentina — Definitive Safeguard Measure on Imports of Preserved Peaches (DS238)

40 Argentina — Measures Affecting Textiles, Clothing and Footwear (DS77); Argentina — Safeguard Measures on Imports of Footwear (DS121); Argentina — Countervailing Duties on Imports of Wheat Gluten from the European Communities (DS145); Argentina — Measures Affecting the Export of Bovine Hides and the Import of Finished Leather (DS155); Argentina — Definitive Anti-Dumping Measures on Imports of Drill Bits from Italy (DS157); Argentina — Definitive Anti-Dumping Measures on Carton-Board Imports from Germany and Definitive Anti-Dumping Measures on Imports of Ceramic Tiles from Italy (DS189); Argentina — Countervailing Duties on Olive Oil, Wheat Gluten and Peaches (DS330); Argentina — Measures Affecting the Importation of Goods (DS438).

41 Argentina — Measures Affecting the Import of Pharmaceutical Products (DS233)

42 Argentina — Safeguard Measures on Imports of Footwear (DS123).

43 Argentina — Measures Affecting the Importation of Goods (DS445)

44 Argentina — Measures Affecting the Importation of Goods (DS446)

45 Argentina — Measures Relating to Trade in Goods and Services (DS453)

46 Argentina — Anti-Dumping Duties on Fasteners and Chains from Peru (DS410)

47 Argentina — Measures Affecting Imports of Footwear, Textiles, Apparel and other Items (DS56); Argentina — Measures Affecting Imports of Footwear (DS164); Argentina — Patent Protection for Pharmaceuticals and Test Data Protection for Agricultural Chemicals (DS171);

The following section looks into some of the cases involving Argentina both as a respondent and a complainant.

# *Argentina as a Respondent*

## Chile: "Definitive Safeguard Measure on Imports of Preserved Peaches"

On 14 September 2001, Chile requested consultations with Argentina in respect of a definitive safeguard measure which Argentina applied on imports of peaches preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water. According to Chile, Argentina's definitive safeguard measure was inconsistent with Articles 2, 4, 5 and 12 of the Agreement on Safeguards, and Article XIX:1 of GATT 1994.

On 6 December 2001, Chile requested the establishment of a panel. The panel was established on 18 January 2002. The European Communities, Paraguay and the United States reserved their third-party rights to participate in the panel's proceedings. On 14 February 2003, the panel circulated its report to the Members. The panel concluded that the Argentine preserved peaches measure was imposed inconsistently with certain provisions of the Agreement on Safeguards and GATT 1994. In particular, the panel concluded that Argentina had failed to demonstrate the existence of unforeseen developments, as required, and make a determination of an increase in imports, in absolute or relative terms, as required, and also that the competent authorities, in their determination of the existence of a threat of serious injury, had failed to evaluate all of the relevant factors having a bearing on the situation of the domestic industry and provide a reasoned and adequate explanation of how the facts supported their determination, and further that the competent authorities had not found that serious injury was clearly imminent. At its meeting on 15 April 2003, the DSB adopted the panel report and in January 2004, Argentina announced that the safeguard measure at issue had been withdrawn on 31 December 2003 in line with the agreement reached between Argentina and Chile and thus in its view it had implemented the DSB's recommendations.<sup>49</sup>

Argentina — Certain Measures on the Protection of Patents and Test Data (DS196); Argentina — Measures Affecting the Importation of Goods (DS444); [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)  
48 [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)  
49 [http://wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds238\\_e.htm](http://wto.org/english/tratop_e/dispu_e/cases_e/ds238_e.htm)

Brazil: "Definitive Anti-Dumping Duties on Poultry"

On 7 November 2001, Brazil requested consultations with Argentina in respect of the definitive anti-dumping duties imposed by Argentina on imports of poultry from Brazil. Brazil considered that the definitive anti-dumping duties imposed, as well as the investigation conducted by the Argentine authorities, might have been flawed and based on erroneous or deficient procedures, inconsistent with Argentina's obligations under the Anti-Dumping Agreement, Article VI of the GATT 1994, and certain articles of the Customs Valuation Agreement.

On 19 November 2001, the EC requested to join the consultations. On 25 February 2002, Brazil requested the establishment of a panel. On 17 April 2002, the panel was established. Canada, Chile, the EC, Guatemala, Paraguay and the US reserved their third-party rights. On 27 June 2002, the panel was composed. On 22 April 2003, the panel circulated its report to the Members. The panel found that Argentina had acted inconsistently with its obligations under certain articles of the Anti-Dumping Agreement. At its meeting on 19 May 2003, the DSB adopted the panel report, with a recommendation to bring the measure into conformity.<sup>50</sup> Argentina withdrew the measure by means of Resolution No. 79/2003.<sup>51</sup>

European Communities: "Safeguard Measures on Imports of Footwear"

On 3 April 1998, the EC requested consultations with Argentina in respect of provisional and definitive safeguard measures imposed by Argentina on imports of footwear. The EC asserted that by Resolution 226/97 of 24 February 1997, Argentina imposed a provisional safeguard measure in the form of specific duties on imports of footwear effective from 25 February 1997, which was followed by Resolution 987/97, which imposed a definitive safeguard measure on these imports effective from 13 September 1997. The EC alleged that the above measures violated certain articles of the Agreement on Safeguards, and Article XIX of GATT 1994.

On 10 June 1998, the EC requested the establishment of a panel. The panel was established on 23 July 1998. Brazil, Indonesia, Paraguay, the US and Uruguay reserved their third-party rights.

<sup>50</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds241\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds241_e.htm)

<sup>51</sup> <http://www.infoleg.gob.ar/infolegInternet/verNorma.do?jessionid=D1A3CE92207DDA6E9CE7E98240D9DE6E?id=82753>

The panel found that Argentina's measure was inconsistent with Articles 2 and 4 of the Agreement on Safeguards. Argentina filed an appeal and the Appellate Body upheld the panel's finding that Argentina's measure was inconsistent with Articles 2 and 4 of the Agreement on Safeguards, but reversed certain findings and conclusions of the panel in respect to the relationship between the Agreement on Safeguards and Article XIX of GATT 1994 and the justification of imposing safeguard measures only on non-MERCOSUR third country sources of supply. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on 12 January 2000. Argentina informed the DSB on 11 February 2000 that the safeguard measure would remain in force until 25 February 2000 and, by that date, the measures aimed at complying with the DSB's recommendations and ruling would be adopted.<sup>52</sup>

In 2012, five WTO members—the European Union, the US, Japan, Mexico and Panama—initiated consultations with Argentina based on restrictions on imports. They challenged various types of non-automatic licenses required for the importation of certain goods and the systematic delay in granting import approval or failure to grant such approval, or the grant of import approval subject to importers undertaking to comply with certain allegedly trade-restrictive commitments, among other measures. The complainants considered these measures to be inconsistent with certain articles of the 1994 GATT, the TRIMs Agreement, the Agreement on Import Licensing Procedures and the Safeguards Agreement.

Some other Members such as Turkey, Guatemala, Australia and Canada joined the consultations. The complainants requested the establishment of a panel, and a single panel was established to examine the disputes raised by the EU, the US, Japan, Mexico and Panama. The panel estimates that it will issue its final report to the parties by the end of June 2014.<sup>53</sup>

<sup>52</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds121\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds121_e.htm)

<sup>53</sup> Argentina — Measures Affecting the Importation of Goods (DS438, DS444, DS445, DS446, DS453). Prior to the adoption of the agenda, Mexico withdrew its request for the establishment of a panel from the agenda of the DSB meeting on 17 December 2012 probably on account of the adoption of the Protocol Amending the Economic Complementarity Agreement No. 55 (ACE 55) in December 2012 [unofficial English translation of the title of the Protocol]

This section examines some recent cases involving Argentina as a complainant.

In 2012, Argentina submitted two consultations with the EU and Spain regarding the importation of biodiesel,<sup>54</sup> one consultation about measures imposed by the USA affecting the importation of animals, meat and other animal products<sup>55</sup> and one consultation regarding US measures affecting the importation of lemons.<sup>56</sup>

In 2013, Argentina submitted two consultations regarding certain measures on the importation and marketing of biodiesel and anti-dumping measures supporting the biodiesel industry taken by the EU on biodiesel from Argentina.<sup>57</sup>

These cases are examined below.

European Union and a Member State: "Certain Measures Concerning the Importation of Biodiesels"

On 17 August 2012, Argentina requested consultations with the European Union and Spain concerning certain measures affecting the importation of biodiesels for accounting purposes with regard to the compliance with the mandatory targets for biofuels. The key measure challenged by Argentina was the Spanish Ministerial Order regulating allocation of quantities of biodiesel needed to achieve the mandatory target of renewable energy. This measure is the national implementation of the European Union regulatory framework for energy from renewable sources. Argentina claimed that the Spanish measure was inconsistent with certain Articles of the 1994 GATT, the TRIMs Agreement and the WTO Agreement. Australia and Indonesia requested to join the consultations. On 6 December 2012, Argentina requested the establishment of a panel.<sup>58</sup>

<sup>54</sup> European Union and a Member State — Certain Measures Concerning the Importation of Biodiesel (DS443)

<sup>55</sup> United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina (DS447)

<sup>56</sup> United States — Measures Affecting the Importation of Fresh Lemons (DS448)

<sup>57</sup> European Union and Certain Member States — Certain Measures on the Importation and Marketing of Biodiesel and Measures Supporting the Biodiesel Industry (DS459); European Union — Anti-Dumping Measures on Biodiesel from Argentina (DS473)

<sup>58</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds443\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds443_e.htm)

European Union and Certain Member States: "Certain Measures on the Importation and Marketing of Biodiesel and Measures Supporting the Biodiesel Industry"

On 15 May 2013, Argentina requested consultations with the European Union and its member states regarding certain measures that allegedly affect the importation and marketing of biodiesel, as well as measures supporting the biodiesel industry. Argentina's request relates to two types of measures adopted by the European Union and certain member states: measures promoting the use of energy from renewable sources and measures establishing support schemes for the biodiesel sector. According to Argentina, those measures are inconsistent with certain articles of the 1994 GATT, the Agreement on Subsidies and Countervailing Measures, the Agreement on Trade-Related Investment Measures, the Agreement on Technical Barriers to Trade and WTO Agreements. The case is still in consultations.<sup>59</sup>

European Union: "Anti-Dumping Measures on Biodiesel from Argentina"

On 19 December 2013, Argentina requested consultations with the European Union regarding provisional and definitive anti-dumping measures imposed on biodiesel originating in, *inter alia*, Argentina, as well as the investigation underlying the measures, and a provision in Council Regulation (EC) 1225/2009 of November 2009, which refers to the adjustment or establishment of costs associated with the production and sale of products under investigation in the determination of dumping margins. Argentina claims that the measures are inconsistent with certain Articles of the Anti-Dumping Agreement, the GATT 1994 and the WTO Agreement.

Russia and Indonesia requested to join the consultations, the latter Member having been accepted by the European Union as a third party.

On 13 March 2014, Argentina requested the establishment of a panel. The panel was established on 25 April 2014. Australia, China, Malaysia, Norway, Russia, Saudi Arabia, Turkey, the United States, Colombia, Indonesia and Mexico reserved their third-party rights.<sup>60</sup>

<sup>59</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds459\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds459_e.htm)

<sup>60</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds473\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm)

United States: "Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina"

On 30 August 2012, Argentina requested consultations with the United States concerning certain measures affecting the importation of animals, meat and other animal products from Argentina. Argentina challenged the import prohibition of fresh (chilled or frozen) beef from Argentina embodied in the interim and final rule of the Animal and Plant Health Inspection Service (APHIS), which amends the regulations of the Code of Federal Regulations (CFR), the failure to recognize certain areas of Argentina's territory as free of foot-and-mouth disease embodied in the APHIS Policy Regarding Importation of Animals and Animal Products, and alleged undue delays in recognizing the animal health status of a region or in granting approval to export animals or animal products from that region with both types of delay occurring under procedures embodied in the US Code of Federal Regulations (CFR) and additional conditions on importation allegedly imposed by Section 737 of the Omnibus Act 2009. In Argentina's view, those measures appear to be inconsistent with certain articles of the GATT 1994, the Sanitary and Phytosanitary Agreement and the WTO Agreement.

On 6 December 2012, Argentina requested the establishment of a panel. The panel was established on 28 January 2013. Australia, China, the European Union, India and Korea reserved their third-party rights. The panel was composed on 8 August 2013 and it expects to issue its final report to the parties in early 2015.<sup>61</sup>

#### FINAL NOTES

As has been illustrated, Latin American Members such as Argentina, Brazil and Mexico have begun to take an active role in the WTO, figuring among the top ten users of the dispute settlement mechanism both as complainants and respondents. Argentina occupies the seventh position as a complainant and the fifth position as a respondent.

As a complainant, Argentina has mostly cited the GATT 1994 and the Agreement Establishing the World Trade Organization. As to specific agreements, it has mostly invoked violations of the Agreements on Safeguards and Anti-dumping, but it has also cited non-compliances with the Agreements on Technical Barriers to Trade, Agriculture and

<sup>61</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds447\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds447_e.htm)

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Sanitary and Phytosanitary Measures. In the past two years, it has also filed cases in which it has cited violations of the Agreement on Trade-Related Investment Measures.<sup>62</sup>

As a respondent, Argentina's measures have also been mostly challenged on the basis of alleged violations of the GATT 1994 and the Agreement Establishing the World Trade Organization, and regarding specific agreements such as the Agreements on Safeguards, Anti-dumping, Textiles and Clothing, Subsidies and Countervailing Measures, Intellectual Property and Agriculture, and in recent cases, the Agreements on Technical Barriers to Trade, Trade-Related Investment Measures and Import Licensing. Only on one occasion was a case based on the General Agreement on Trade in Services.<sup>63</sup>

Fortunately, some of the Members' political and economic measures that gave rise to some of the disputes have been withdrawn or subject to changes.

Regarding the case concerning *certain measures in connection with the importation of Biodiesel against the European Union and Spain*,<sup>64</sup> this latter Member amended the rule challenged by Argentina by means of Order IET/2736/2012 dated 20 December 2012, which may thus be an answer to Argentina's request.<sup>65</sup>

On the other hand, on 24 April 2014, Argentina enacted Law No. 26,932 by which Argentina reached an agreement with the Spanish firm Repsol providing for the payment of US\$5 billion in government bonds as compensation for the 51 percent of the share capital held by Repsol YPF when the state took over the company, and the commitment of both parties to terminate all legal proceedings over the matter.<sup>66</sup>

The referred to measures can be a step towards the amicable settlement of WTO disputes, which is the aim of the whole mechanism: a way of securing a positive solution to disputes that is mutually acceptable to the parties and consistent with the covered agreements.

<sup>62</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_agreements\\_index\\_e.htm?id=A6](http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6)

<sup>63</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_agreements\\_index\\_e.htm?id=A6](http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6)

<sup>64</sup> DS443

<sup>65</sup> <http://www.boe.es/boe/dias/2012/12/22/pdfs/BOE-A-2012-15471.pdf>

<sup>66</sup> <http://www.infoleg.gob.ar/infolegInternet/anexos/225000-229999/229283/norma.htm>

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## ARGENTINA AS A GLOBAL SOURCING DESTINATION

### Status Quo and Opportunities

Lydia Bals

With increasing internationalization of value chains, supply markets have become more diversified for companies. The questions arise in which geography and from which suppliers companies can source their raw materials, (intermediate) products and services as part of efficient and effective procurement process. From a practical perspective, both the topics "Global Sourcing" as well as "Offshoring" (including both the make and buy alternatives) play an important role herein. For Argentina there are several economic opportunities in this:

As an outsourcing destination in Information Technology (IT), it competes with established Asian nations. Therefore, to learn more about the competitive differentiators in comparison to these other destinations is of high interest. From a research perspective, this moreover offers a geographical destination warranting more research to study the similarities, but especially the differences to previous studies (largely in the Asian context).

Herein, companies are realizing their make or buy decisions by either sourcing from external parties completely or by establishing their own operations or joint ventures in offshore locations. As these two approaches basically correspond to "Global Sourcing" and "Offshoring" in the literature, these two terms are further clarified in the following section together with the make or buy process.

The current attractiveness of Argentine cities as global sourcing/offshore outsourcing destinations will be reviewed, and then opportunities for improving their ranking positions will be more closely examined. In doing so, both a national agency and a provider perspective will be taken as a first attempt to shed more light on a current gap between an unfortunately weakening ranking position, good intentions by a national agency and constructive criticism provided by two exemplary providers.

Finally, the further steps of investigation are outlined, which are aiming to address the research questions that are raised within this chapter.