In this series, Andrés Musacchio (Buenos Aires) and Ulrich Schüle (Mainz) publish research results and conference proceedings on economic policy issues and company management in the Argentine-German context. The publication series mainly serves as a forum for young researchers of universities co-operating within the framework of the German-Argentine University Centre, namely the bi-national partnerships between the Universidad de Ciencias Empresariales y Sociales (UCES) in Buenos Aires and the Hochschule Mainz, the Universidad Nacional del Litoral in Santa Fé and the Hochschule Kaiserslautern, and the cooperation between the Universidad Nacional de Tucumán and the Hochschule Biberach. The series also offers an opportunity for publishing research results of other projects with respect to economic and business issues in the German-Argentine context.
INTERNATIONAL TRADE, FINANCE, AND INVESTMENT POLICIES IN ARGENTINA
TRENDS AND ISSUES

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Table of Contents

Preface iii
Authors v

The Macroeconomic Environment
International Trade and Investment Policies in Latin America and
Argentina – Historical Background
Estefania Guzmán Calderón 1
Argentina’s International Trade and Investment Policies – Historical
Overview and Current Issues
Ulrich Schäile 13
Argentina’s Macroeconomic Development and its Challenges
Marc Piatolo 31

Finance and Investment
Mutual Fund Investment in Latin America
Christian Armbruster and Rene Ruppenthal 53
The Argentine Financial System – Main Features and Recent Trends
Martín Dutto 61

Selected Issues
Privatization and Re-Nationalization of Pension Funds
Andrés Masuccio 83
Towards the Re-Nationalization of Core Industries in Latin America:
The Case of Argentina’s YPF
Maria de las Mercedes Archimbal 93
Argentina and Dispute Settlement in the WTO context
Viviana Khger 105
Argentina as a Global Sourcing Destination – Status Quo and Opportunities
Lydia Bals 119
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 principles1—which run throughout all the agreements—to the regulation of trade issues connected with agriculture,2 textiles and clothing,3 banking, telecommunications,4 government purchases,5 industrial standards and product safety,6 food sanitation regulations,7 intellectual property,8 etc., and also the settlement of disputes at the WTO.9

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

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3. Agreement on Textiles and Clothing, http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#c Agreement
4. General Agreement on Trade in Services, http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#m Agreement
of countries can declare that they have an interest in the case and enjoy some rights. As a consequence, WTO members can take part in the procedure as complainants, respondents or third parties.

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”, 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 (Palmeier 2014).

The first stage of the procedure, called “consultation”, consists of a series of talks designed to have the Parties settle their differences by themselves. 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. This leads to the second stage of the procedure.

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.

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.

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. The panel’s findings have to be based on the agreements cited.

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.

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. 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.

The DSB has to accept or reject the appeals report within 30 days—rejection is only possible by consensus. 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.

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

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 (42%).

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.

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.

<table>
<thead>
<tr>
<th>Complainant</th>
<th>Number of disputes</th>
<th>Respondent</th>
<th>Number of disputes</th>
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<tbody>
<tr>
<td>USA</td>
<td>107</td>
<td>USA</td>
<td>121</td>
</tr>
<tr>
<td>EU</td>
<td>91</td>
<td>EU</td>
<td>78</td>
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<td>Canada</td>
<td>33</td>
<td>China</td>
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<tr>
<td>Brazil</td>
<td>26</td>
<td>India</td>
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<tr>
<td>Mexico</td>
<td>23</td>
<td>Argentina</td>
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</tr>
<tr>
<td>India</td>
<td>21</td>
<td>Canada</td>
<td>17</td>
</tr>
<tr>
<td>Argentina</td>
<td>20</td>
<td>Brazil</td>
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<td>Japan</td>
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<td>Japan</td>
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<tr>
<td>Korea</td>
<td>16</td>
<td>Australia</td>
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<tr>
<td>Thailand</td>
<td>13</td>
<td>Mexico</td>
<td>14</td>
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<tr>
<td>China</td>
<td>12</td>
<td>Korea</td>
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<td>Chile</td>
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<td>Chile</td>
<td>13</td>
</tr>
<tr>
<td>Australia</td>
<td>7</td>
<td>Thailand</td>
<td>3</td>
</tr>
</tbody>
</table>

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)

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, 22 as a respondent and 48 as a third party.

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), Chile (six cases), the European Union-former European Communities (six cases), Hungary (one case), Peru (one case), and also against the United States (five cases).

[29](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)
[30](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)
[31](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)
[32](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)
[33](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)
[34](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)
[35](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)
[36](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)
Argentina is 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 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 the 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.
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 the panel's finding 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.52

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 2014.53

52 http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds121_e.htm
53 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 Complementation 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, one consultation about measures imposed by the USA affecting the importation of animals, meat and other animal products and one consultation regarding US measures affecting the importation of lemons.

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.

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.

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.

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54 European Union and a Member State — Certain Measures Concerning the Importation of Biodiesel (DS443)
55 United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina (DS447)
56 United States — Measures Affecting the Importation of Fresh Lemons (DS448)
57 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)
58 http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds443_e.htm
59 http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds459_e.htm
60 http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm
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.

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, 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.

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, this latter Member amended the rule challenged by Argentina by means of Order JET/2736/2012 dated 20 December 2012, which may thus be an answer to Argentina’s request.

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.

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.

62 http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6
63 http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6
64 DS443
66 http://www.infoleg.gob.ar/infolegInternet/anexos/225000-229999/229283/norma.htm
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.