

ARGENTINA – FOOTWEAR (EC)¹ (DS121)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	European Communities	SA Arts. 2, 4 and 12 GATT Art. XIX:1(a)	Establishment of Panel	23 July 1998
			Circulation of Panel Report	25 June 1999
Respondent	Argentina		Circulation of AB Report	14 December 1999
			Adoption	12 January 2000

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at Issue:** Provisional and definitive safeguard measures imposed by Argentina.
- **Product at Issue:** Imports of footwear into Argentina.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **GATT Art. XIX:1(a) (unforeseen developments):** Having determined that any safeguard measure imposed after the entry into force of the WTO Agreement must comply with the provisions of both the SA and GATT Art. XIX, the Appellate Body reversed the Panel's conclusion that the GATT Art. XIX:1(a) "unforeseen developments" clause does not add anything additional to the SA in respect of the conditions under which a safeguard measure may be applied. It found instead that Art. XIX:1(a), although an independent obligation, describes certain circumstances that must be demonstrated as a matter of fact. The Appellate Body did not however complete the Panel's analysis in this regard.
- **SA Art. 2 (parallelism):** The Appellate Body upheld the Panel's ultimate conclusion that, based on the ordinary meaning of Arts. 2.1, 2.2 and 4.1(c), a safeguard measure must be applied to the imports from "all" sources from which imports were considered in the underlying investigation, and found that Argentina's investigation was inconsistent with Art. 2 since it excluded imports from MERCOSUR from the application of its safeguard measure while it had included those imports from MERCOSUR in the investigation.
- **SA Arts. 2.1 (application of safeguard measures) and 4.2(a) (injury determination – increased imports):** The Appellate Body found that the "increased imports" element under the SA requires not only an examination of the "rate and amount" (as opposed to just comparing the end points) of the increase in imports, but also a demonstration that "imports must have been recent enough, sudden enough, sharp enough and significant enough, both quantitatively and qualitatively, to cause or threaten to cause "serious injury". Argentina had failed to consider adequately import trends and quantities.
- **SA Art. 4.2(a) (injury determination – serious injury):** The Appellate Body agreed with the Panel's interpretation that Art. 4.2(a) requires a demonstration of "all" the factors listed in Art. 4.2(a) as well as all other factors relevant to the situation of the industry concerned. Argentina had failed to meet the requirement.
- **SA Art. 4.2(b) (injury determination – causation):** The Appellate Body upheld the Panel's legal finding that a causation analysis requires an examination of: (i) the relationship (coincidence of trends) between the movements in imports and injury factors; (ii) whether the conditions of competition demonstrate a causal link between imports and injury; and (iii) whether injury caused by factors other than imports had not been attributed to imports. The Appellate Body upheld the finding that Argentina's findings on causation were not adequately explained and supported by evidence.

¹ Argentina – *Safeguard Measures on Imports of Footwear*

² Other issues addressed: terms of reference (modified measures, DSU Art. 6.2); "all pertinent information" (SA Art. 12.2); passive observer status; terms of reference (DSU Art. 7); standard of review; basic rationale of panel findings (DSU Art. 12.7).