

ARGENTINA – POULTRY ANTI-DUMPING DUTIES¹

(DS241)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Brazil	ADA Arts. 2, 3, 5 and 6	Establishment of Panel	17 April 2002
			Circulation of Panel Report	22 April 2003
Respondent	Argentina		Circulation of AB Report	NA
			Adoption	19 May 2003

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping measures, in the form of specific anti-dumping duties, imposed by Argentina on imports from Brazil for a period of three years.
- **Product at issue:** Poultry from Brazil imported into Argentina.

2. SUMMARY OF KEY PANEL FINDINGS²

- **ADA Art. 5.3 (initiation of investigation – application):** The Panel found that, by basing the determination of initiation of an investigation on “some” instances of dumping, Argentina violated Art. 5.3 as a dumping determination should be made in respect of the product as a whole for “all” comparable transactions, not for individual transactions.
- **ADA Art. 5.8 (initiation of investigation – insufficient evidence):** The Panel found that Argentina violated Art. 5.8 as it failed to reject an application for investigation which was based on insufficient evidence following the issuance of a negative injury determination from the relevant investigation authority.
- **ADA Art. 6.8 (evidence – facts available):** The Panel found that Argentina was not in violation of Art. 6.8 when it disregarded information submitted by a company that had not fulfilled procedural provisions of the domestic law. As information submitted by such companies was not considered “appropriately submitted” within the meaning of Art. 6.8, Argentina was held not to be in violation as regards one other claim under this Article. However, Argentina was found in violation of Art. 6.8 by rejecting information received from three other companies, as the Panel could not find, in the record of the investigation, a reference to any of the reasons provided by Argentina for the rejection.
- **ADA Art. 6.10 (evidence – individual dumping margins):** The Panel found that Argentina violated Art. 6.10 as it did not calculate an individual dumping margin for two companies. The Panel found that an investigating authority should calculate the dumping margin for each individual exporter regardless of whether it was provided with partial, unreliable or unusable information from the exporters or producers.
- **ADA Arts. 2.4 and 2.4.2 (dumping determination – fair comparison):** The Panel found Argentina in violation of Art. 2.4 as it did not make freight cost adjustments to its calculation of the normal value in the case of a company that had provided supporting documents. However, the Panel found no violation in the case where the company had failed to provide supporting documentation. The Panel found Argentina in violation of Art. 2.4.2 as it established weighted average normal values on the basis of statistical samples of domestic sales transactions.
- **ADA Art. 3.1 and 3.5 (injury determination – causation):** The Panel stated that where an authority examines different injury factors using different periods, a prima facie case is made that it failed to conduct an “objective” examination. Since Argentina did not provide a justification for its use of different periods, it failed to rebut the prima facie case and was found in violation of Art. 3.1. The Panel found no violation of Art. 3.5 as there was nothing to suggest that the injury period should not exceed the dumping period, provided that the entire dumping period was included within the period of review for injury.
- **ADA Art. 3 (injury determination – non-dumped imports):** The Panel found Argentina had violated Art. 3.1, 3.2, 3.4 and 3.5 by including “non-dumped” imports from two companies in the injury analysis.
- **DSU Art. 19.1 (Panel and Appellate Body recommendations – suggestion on implementation):** The Panel suggested for implementation that Argentina repeal the definitive anti-dumping measure at issue.

¹ Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil

² Other issues addressed: procedural requirements under ADA Art. 6, ADA Arts. 4 and 9; relevance of prior proceedings before MERCOSUR Tribunal.