

**ARGENTINA – MEASURES AFFECTING THE EXPORT OF BOVINE HIDES
AND THE IMPORT OF FINISHED LEATHER**

Agreement Between the European Communities and Argentina
Concerning Procedures under Articles 21 and 22 of the DSU

The following communication, dated 25 February 2002, from the Permanent Mission of Argentina and the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated at the request of those delegations.

On 16 February 2001, the Dispute Settlement Body (DSB) adopted the Panel report in the dispute *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather* (WT/DS155).

On 14 May 2001, the European Communities (EC) requested that the reasonable period of time for the implementation of the DSB recommendations and rulings be determined through binding arbitration pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The Arbitrator determined that the reasonable period of time would expire on 28 February 2002.

Argentina has communicated to the EC the steps it has already taken to comply with the DSB recommendations and rulings regarding the customs procedures applicable to the export of bovine hides. In particular, the measures adopted by Argentina are Nota No. 52/01 SDGTLA, Nota No. 56/01 DI TECN, Nota No. 82/01 DI TECN, Dictamen No. 91/01 DV RTAG, Nota No. 88/01 DI TECN, Instrucción General No. 28/01 SDGLTA, attached, which provide for the adjustment of the Customs clearance forms to be used in those cases where *Resolución* ANA No. 2235/96 applies.

The EC also takes note of the amendments to the regulations governing the system of IVA advance payments. Those amendments are laid down in *Resolución General* AFIP No. 1048/2001 and *Resolución General* AFIP No. 1100/2001, attached.

In view of the concrete action undertaken by Argentina during the reasonable period of time in this dispute, and in the light of the exceptional difficulties that Argentina is currently facing, the EC and Argentina have agreed on the following procedures in the follow-up to this dispute:

- "1. The EC and Argentina will pursue their discussions on compliance by Argentina with the DSB recommendations and rulings. The DSB will be kept informed of the achievements made in the implementation.
2. If at any time after the expiry of the reasonable period of time the EC decides to make a request for authorization to suspend concessions or other obligations under

the DSU, Argentina will not assert that the EC is precluded from obtaining DSB authorization because the EC's request was made outside the 30 day time-period specified in the first sentence of Article 22.6 of the DSU. However, the EC's resort to the DSU for the purposes of suspension of concessions or other obligations may take place only after completion of proceedings under Article 21.5 of the DSU."

We request you to circulate this letter and its annexes to the WTO Members, for the DSB to take note of the procedural agreement between the EC and Argentina at its regular meeting on 8 March 2002.

Note No. 52/01 (SDGLTA)

Buenos Aires, 22 January 2001

Subdirector General of Internal Customs Operations
Subdirector General for Metropolitan Customs Operations

Concerns: Leather exports: Inspection

In view of the participation of private entities in the inspection of leather for export under the conditions provided for in Resolution (ex ANA) No. 2235/96, and considering that such participation must not infringe statistical secrecy or the legal principle which prohibits the identification of the exporter involved and safeguards the trade strategy applied in the export transaction, a list is provided herebelow of the data for which the inspector must maintain confidentiality with respect to the entities participating in the inspection.

Tax Identification Number (CUIT) of the shipper
Tax Identification Number (CUIT) of the exporter
Tax Identification Number (CUIT) of the carrier
Name of the consignee
Bank involved
Identifier of the way bill
Mark of the packages
Date of shipment
Date of closure of sale
Country of the means of transport
Registration number of the means of transport
Currency code
Amount of refunds
Inputs imported for consumption
Value of inputs admitted temporarily

Note No. 56/01 (DI TECN)

Ref: ADGI 13288-236-1/01 (copy)

Buenos Aires, 30 January 2001

Directorate for Legal Affairs

Further to the report of the WTO Panel in the case *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather* referred to on pages 2-4 of Record 13288-236-1/01 (copy attached hereto), the undersigned participated in the meeting with representatives of the EC held at the Directorate for the Settlement of International Economic Disputes.

On that occasion, the said representatives were informed of the decision of the Directorate-General of Customs, implemented through Note No. 52/01(SDGLTA), also attached hereto, regarding the data subject to confidentiality during the physical inspection of the goods to be exported, pursuant to Note No. 62/99 (DE ASES).

However, in the above-mentioned meeting the representatives of the EC requested the confidentiality of other data, such as the f.o.b. value, the weight of the packages and the country of destination.

At the meeting, I undertook to examine this request, which is why I am asking for the assistance of this Directorate on the following:

Resolution No. 2235/96 refers exclusively to the involvement of authorized entities in the inspection of the goods.

This act – inspection – consists merely in determining the type, class, quality and quantity of the goods to be exported, a process which should involve the examination of the goods themselves without having to resort to other data in the declaration.

Although such other data may not be covered by statistical secrecy, it is the firm view of this Directorate that they are subject to the legal principle protecting the confidentiality of the trade strategy applied in the export transaction.

Consequently, and in keeping with the specific purpose of Resolution No. 2235/96, mentioned in paragraphs 4 and 5 above, the only document that the inspector needs to submit to the participating entities is a copy of Form OM 1993 A, containing information on the following only: subregime, customs office, officialization, year, customs office, DC type, pages and information corresponding to the product, except total number of kilos net, country of destination, province, statistical unit, number of statistical units, additional information, options and advantages.

For the sake of clarity, a copy of OM 1993 has been provided, highlighting the various items referred to in the previous paragraph.

At the request of the Directorate for the Settlement of International Economic Disputes, we would appreciate your opinion prior to 6 February 2001 in order to be able to submit the proposal in the context of the panel procedure on leather and the IVA involving the EC.

Note No. 82/01 (DI TECN)

Buenos Aires, 8 February 2001

Subdirector General of Internal Customs Operations
Subdirector General for Metropolitan Customs Operations

Concerns: Leather exports: Inspection

In view of the participation of private entities in the inspection of leather for export under the conditions provided for in Resolution (ex ANA) No. 2235/96, and considering that such participation must not infringe statistical secrecy or the legal principle which prohibits the identification of the exporter involved and safeguards the trade strategy applied in the export transaction.

Pursuant to Notes Nos. 52/01 (SDGLTA) and 56/01 (DI TECN) and Opinion No. 91/01 (DV RTAG) we have provided below a list of the data for which the inspector must maintain confidentiality with respect to the entities participating in the inspection.

Form OM 1993 A

General information

1. Registration number of the export destination (EC)
2. Number/business name and Tax Identification Number (CUIT) of :
 - (a) the exporter
 - (b) the customs agent
 - (c) the customs transport agent
 - (d) the carrier
 - (e) the bank involved
3. Means of transport
4. Transport document
5. Identifier of the way bill
6. Name of transport company/registration/owner
7. Flag
8. Port of shipment
9. Mark and number of packages
10. Packaging
11. Total number of packages
12. Gross weight
13. Date of shipment/time-limit
14. Purpose/authorization number
15. Customs office of exit
16. Conditions of sale
17. Total f.o.b. value/currency
18. Total freight/currency
19. Total insurance/currency
20. Guarantees
21. Additional information
22. Date of closure of sale

Information concerning the goods

- 23. Total net weight in kilograms
- 24. Province of origin
- 25. Country of destination
- 26. Statistical unit/number of statistical units
- 27. Additional information
- 28. Options/advantages

Market value

- 29. Unit value in foreign exchange/unit/number of units
- 30. Total f.o.b. in foreign exchange/dollars
- 31. Official unit price/coefficient/number of units
- 32. Documents to be submitted

Customs value

- 33. Adjustment /deduction to be made in foreign exchange
- 34. Customs value in foreign exchange/dollars
- 35. Temporarily imported inputs in dollars
- 36. Inputs imported for consumption in dollars
- 37. Value of refunds

Liquidation

- 38. Amounts to be paid/collected/guaranteed
- 39. Date of closure of sale.

Opinion No. 91/01

ADGI No. 13288/236-1/01 (copy)
Concerns: Statistical secrecy/Request by the EC

Buenos Aires

Advisory Department

The present matter has been submitted to this legal service for an opinion by virtue of an enquiry from the Technical Directorate in relation to the request of the representatives of the European Community to add to the list of confidential data in Note No. 52/01 (SDGLTA), which concerns the inspection of leather exports.

That Note reads as follows:

"In view of the participation of private entities in the inspection of leather for export under the conditions provided for in Resolution (ex ANA) No. 2235/96, and considering that such participation must not infringe statistical secrecy or the legal principle which prohibits the identification of the exporter involved and safeguards the trade strategy applied in the export transaction, a list is provided herebelow of the data for which the inspector must maintain confidentiality with respect to the entities participating in the inspection.

Tax Identification Number (CUIT) of the shipper
Tax Identification Number (CUIT) of the exporter
Tax Identification Number (CUIT) of the carrier
Name of the consignee
Bank involved
Identifier of the way bill
Mark of the packages
Date of shipment
Date of closure of sale
Country of the means of transport
Registration number of the means of transport
Currency code
Amount of refunds
Inputs imported for consumption
Value of inputs admitted temporarily"

It should be mentioned that the Panel of the World Trade Organization in the case *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather* took the view that Resolution (ex ANA) No. 2235/96 could not be considered an instrument for the impartial administration of the customs laws and regulations described in Article X:1, and consequently it was inconsistent with Article X:3(a) of the GATT 1994, since the presence in the inspection process of persons having a trade interest contrary to that of the parties involved in the export transaction entailed the risk that such provisions may be applied in a partial manner by permitting such persons to obtain confidential information to which they had no right of access.

In view of the aforementioned, at the meeting held on 25 and 26 January of this year, the European delegation requested the reclassification as confidential of 16 items contained in the shipping form, such as the f.o.b value, the weight of the packages and the country of destination, in order to protect the trade strategy applied in the export transaction, and the Technical Director, as representative of the Customs Administration, undertook to examine that request.

Having now examined the matter at issue, this legal service would like to point out that since the rules applicable to statistical secrecy were established in the Note DE ASES No. 062/99 (included in the file of these proceedings), it should be borne in mind that questions with respect to Resolution ANA No. 2235/96 are regulated on the basis of the GATT Agreement, incorporated in our legislation by Law 24.425.

Thus, bearing in mind the legal supremacy conferred on international treaties in Article 22, indent 22 of the national Constitution, the application of the said Resolution should be adapted to the Agreement in question.

In conclusion, we consider that it would be appropriate to expand the list of data for which the inspector must maintain confidentiality *vis-à-vis* private entities participating in the inspection of leather, in accordance with the request submitted by the European Commission.

(signed)

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Deputy Chief

Tax Regime and General Affairs Division (int)

Advisory Department

Directorate for Legal Affairs

Note No. 88/01 (DI TECN)

Buenos Aires, 9 February 2001

DIRECTORATE OF CUSTOMS DATA PROCESSING

Concerns: Statistical Secrecy – Request by the EC

Considering the results of the WTO panel proceedings in *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather* and the request of the European Union in connection with the participation of entities authorized under Resolution No. 2235/96, and in view of the appropriateness of maintaining the confidentiality of data relating to statistical secrecy and all data relating to the trade strategy applied in a given export transaction, we hereby request the introduction of a process whereby the inspector prints out Form OM 1993 A, corresponding to the form presented by the EC, containing the data listed below, as the only document to be used in conjunction with the entities participating in the inspection.

General information

1. Subregime
2. Customs office
3. Officialization
4. Year – Customs office – Type
5. Pages

Information concerning the goods

6. Product
7. Type
8. SIM heading
9. NALADISA
10. List
11. Status
12. Goods declaration

In this connection, we provide the following documents as background information:

Notes Nos. 52/01 (SDGLTA), 56/01 (DI TECN) and 82/01 (DI TECN), and Opinion No. 91/01 (DV RTAG) as well as Form OM 1993 A with the data to be printed.

Priority treatment requested.

General Instruction No. 28/91 (SDGLTA)

Buenos Aires, 22 March 2001

In view of the participation of private entities in the inspection of leather for export under the conditions provided for in Resolution (ex ANA) No. 2235/96, and considering that such participation must not infringe statistical secrecy or the legal principle which prohibits the identification of the exporter involved and safeguards the trade strategy applied in the export transaction, pursuant to Notes Nos. 52/01 (SDGLTA), 56/01 (DI TECN) and 82/01 (DI TECN) and Opinion No. 91/01 (DV RTAG), in all inspections to take place as of 26 March 2001, the inspector is hereby instructed to proceed only on the basis of the document *Dec Detallada Resolución No. 2235/96 y Secreto Estadístico*, which may be accessed through the mddtabrs1 programme, indicating the destination code (EC) printing it by pressing F3.

For publication in the Bulletin of the Directorate-General of Customs.

General Resolution AFIP1048/2001

Federal Public Revenue Administration

TAXES

General Resolution 1048

Value Added Tax. Definitive Import of Goods. Optional Simplified Import Regime. Decree No. 161/99 and its Supplementary Regulations. Tax collection regimes. General Resolutions No. 3431 (DGI), and amendments and supplements thereto. Amendment.

Buenos Aires, 19 July 2001

HAVING REGARD TO Decree No. 161 of 4 March 1999 introducing an optional simplified definitive import regime for transactions involving small quantities and General Resolution No. 3431 (DGI) and amendments and supplements thereto, and

WHEREAS:

The above-cited general resolution established a regime for the collection of the value added tax applicable to transactions involving the definitive import of taxable goods.

In the light of the evaluation conducted, and bearing in mind the objectives underlying the introduction of the optional simplified definitive import regime, transactions carried out under the said regime should be exempt from the levies provided for in General Resolution No. 3431(DGI) and amendments and supplements thereto.

The Directorate of Legislation and the Directorate of Programmes and Tax Regulations have acted within their respective spheres of competence.

This resolution is enacted in exercise of the powers conferred under Article 27 of the Law on the IVA (regulatory enactment in 1997) and amendments thereto, Article 22 of Law No. 11.683 (regulatory enactment in 1998) and amendments thereto, and Article 7 of Decree No. 618 of 10 July 1997 and supplements thereto.

Wherefore,

THE FEDERAL ADMINISTRATOR OF THE FEDERAL PUBLIC REVENUE ADMINISTRATION

RESOLVES:

Article 1 – General Resolution No. 3431 (DGI) and amendments and supplements thereto shall be amended as follows: Article 2 shall be replaced by the following:

"ARTICLE 2 – An exception shall be made for definitive import transactions involving taxable goods which:

1. Are intended for the personal use or consumption by the importer, or
2. are covered by Article 26 of the Law on IVA (Regulatory Enactment of 1997) and amendments thereto, or

3. are intended for use in the economic activity of the importer within the scope of Article 33 of Title V of the Law on IVA (Regulatory Enactment of 1997) and amendments thereto, except in respect of importers covered by Article 3(b), or
4. are bovine animals, only when the importer is a registered taxpayer for the IVA and is an owner, a lessee, licensee or other form of holder under whose name and legal and economic responsibility the slaughtering establishment operates, whether a natural or legal person – including national, provincial and municipal entities, or
5. are introduced into the customs territory through border posts under the terms laid down in Decree 161/99 and supplementary regulations thereto, introducing the optional simplified import regime."

Article 2 – The provisions of this resolution shall apply to import transactions undertaken as from the fifth administrative working day, inclusive, following its publication in the Official Bulletin.

Article 3 – For registration, publication and transfer to the National Directorate of Official Records, and filing. – Héctor C. Rodríguez

General Resolution AFIP No. 1100/2001

Federal Public Revenue Administration

TAXES

General Resolution 1100

Value Added Tax (IVA). Article 28, paragraph four, of the Taxation Law. Reduced differential rate. Assessment regimes. General Resolutions Nos. 3337 (DGI) and 3431 (DGI) and amendments and supplements thereto. Amendments.

Buenos Aires, 1 October 2001

HAVING REGARD FOR the value added tax (IVA) assessment regimes applicable to taxable sales transactions of goods, rental of works, and hiring and provision of services as well as the definitive importation of goods established in General Resolutions Nos. 3337 (DGI) and 3431 (DGI) and their respective amendments and supplements, and

WHEREAS:

The percentage rate of the applicable levy must be directly related to the rate of the value added tax (IVA) to which the transaction in question is subject;

Article 28 of the mentioned Taxation Law provides for a differential rate equal to 50 per cent of the base rate for certain taxable transactions;

Accordingly, the rates applicable under the regimes established in General Resolutions Nos. 3337 (DGI) and 3431 (DGI) and their respective amendments and supplements need to be adjusted;

The Directorate of Legislation and the Directorate of Programmes and Tax Regulations have acted within their respective spheres of competence;

This Resolution is enacted in exercise of the powers conferred under Article 27 of the Law on the IVA (regulatory enactment of 1997) and amendments thereto, Article 22 of Law No. 11.683 (regulatory enactment of 1998) and amendments thereto, and Article 7 of Decree No. 618 of 10 July 1997 and supplements thereto,

Wherefore,

THE FEDERAL ADMINISTRATOR OF THE FEDERAL PUBLIC REVENUE ADMINISTRATION

RESOLVES:

Article 1 – General Resolution No. 3337 (DGI) and the amendments and supplements thereto shall be amended as follows:

Article 2 shall be replaced by the following:

"ARTICLE 2 – The amount of the levy to be applied shall be determined by applying to the net price of the transaction quoted in the invoice or equivalent document – pursuant to Article

10 of the Law on IVA (regulatory enactment of 1997) and amendments thereto – a rate of 5 PER CENT.

The above rate shall be 2.5 PER CENT in the case of sales transactions of goods, rental of works, and hiring and provision of services, which are taxable at a rate equal to 50 PER CENT of the rate laid down in the first paragraph of Article 28 of the said Taxation Law.

The Rates provided for in this article shall apply except in the case of concepts and/or subjects that are expressly exempted under this regime"

Article 2 - General Resolution No. 3431 (DGI) and the amendments and supplements thereto shall be amended as follows:

Article 3 shall be replaced by the following:

"ARTICLE 3 - The amount of the levy to be applied shall be determined by applying to the tax base defined in Article 25 of the Law on IVA (regulatory enactment of 1997) and amendments thereto the rates applicable to each case as set forth below:

(a) Registered IVA taxpayers:

1. 10 PER CENT for transactions involving the definitive import of goods covered by the base rate set forth in the first paragraph of Article 28 of the above Law on IVA;
2. FIVE PER CENT for transactions involving the definitive import of goods taxed at a rate equal to 50 PER CENT of the rate set forth in the first paragraph of Article 28 of the above Law on IVA;

(b) Non-registered taxpayers who do not certify their status as persons exempted or not subject to IVA or, where applicable, small taxpayers registered under the simplified regime (*Monotributo*):

1. 12.7 PER CENT for transactions involving the definitive import of goods covered by the base rate set forth in the first paragraph of Article 28 of the above Law on IVA;
2. 5.8 PER CENT for transactions involving the definitive import of goods taxed at a rate equal to 50 PER CENT of the rate set forth in the first paragraph of Article 28 of the above Law on IVA.

This indent shall include goods intended for use in the economic activity of the importer.

The amount due shall be payable together with the IVA applicable to the import, pursuant to the fourth paragraph of Article 27 of the mentioned Law, and shall be paid by means of forms OM 686-9-B, 2132 or 2132/9 as appropriate."

Article 3 – The provisions of this Resolution shall apply to transactions – sale of goods, rental of works, hiring and provision of services and the definitive importation of goods – carried out as of 1 November 2001 inclusive.

Article 4 - For registration, publication and transfer to the National Directorate of Official Records, and Filing. – José A. Caro Figueroa.
