

**ARGENTINA – DEFINITIVE ANTI-DUMPING MEASURES ON CARTON-BOARD
IMPORTS FROM GERMANY AND DEFINITIVE ANTI-DUMPING MEASURES
ON IMPORTS OF CERAMIC FLOOR TILES FROM ITALY**

Request for the Establishment of a Panel by the European Communities

The following communication, dated 14 September 2000, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The European Communities (the "EC") request the establishment of a Panel pursuant to Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") regarding the following measures applied by Argentina:

- the definitive anti-dumping measures on imports of carton-board from Germany imposed on 26 February 1999; and
- the definitive anti-dumping measures on imports of ceramic floor tiles ("porcellanato") from Italy imposed on 12 November 1999.

On 26 January 2000, the EC requested consultations with Argentina with a view to reach a mutually satisfactory solution of the matter. The request was circulated in document WT/DS189/1 dated 1 February 2000. Such consultations, which were held on 1 March 2000 in Geneva, have allowed a better understanding of the respective positions, but have not led to a satisfactory resolution of the matter.

The EC considers that the above mentioned measures are inconsistent with Articles 2.4, 6.5, 6.8 in conjunction with Annex II, 6.9 and 6.10 of the Anti-dumping Agreement and, as a result, nullify and impair the benefits accruing to the EC under that agreement.

Specifically, the claims submitted by the EC may be summarised as follows:

A. Anti-dumping measures on imports of Ceramic Floor Tiles from Italy

- (1) The Argentinean investigative authority (the *Dirección de Competencia Desleal*, "DCD") disregarded all the information on normal value and on export prices provided by the exporters included in the sample, and used instead the normal value data alleged by the

petitioner and official import statistics. The DCD has not explained why the information provided by the exporters was disregarded. By disregarding that information without any valid justification, the DCD acted inconsistently with Article 6.8 and Annex II, which only allow investigating authorities to resort to "facts available" in those cases where the exporters do not provide timely necessary information or significantly impede the investigation.

- (2) The DCD failed to calculate an individual dumping margin for each of the exporters included in the sample, contrary to Article 6.10.
- (3) The DCD failed to make due allowance for the differences in physical characteristics between the models exported to Argentina and those sold in Italy, thereby violating Article 2.4.
- (4) The DCD failed to inform the Italian exporters of the essential facts concerning the existence of dumping which formed the basis for the decision whether to apply definitive measures, thereby preventing the Italian exporters from defending adequately their interests, contrary to the requirement set out in Article 6.9.

B. Anti-dumping measures on imports of Carton Board from Germany

- (1) The DCD disregarded all the information on normal value and on export prices provided by the exporter FS Karton, and used instead the normal value data alleged by the petitioner and official import statistics. The DCD has not explained why the information supplied by FS Karton was disregarded. By disregarding that information without any valid justification, the DCD acted inconsistently with Article 6.8 and Annex II, which only allow investigating authorities to resort to the "facts available" in those cases where the exporter does not provide timely necessary information or significantly impedes the investigation.
- (2) In the event that Argentina would argue that the normal value and export price information submitted by FS Karton was disregarded because FS Karton failed to withdraw its request for confidential treatment or to provide non-confidential summaries of that information, the EC submits that the DCD acted inconsistently with the requirements of Article 6.5.
- (3) The DCD did not calculate an individual dumping margin for FS Karton, contrary to Article 6.10.
- (4) The DCD failed to make due allowance for the fact that the export price was determined on the basis of import statistics showing FOB values whereas the normal value was established on the basis of information on prices "delivered" to the customer, thereby violating Article 2.4.
- (5) The DCD failed to inform FS Karton of the essential facts concerning the existence of dumping which formed the basis for the decision whether to apply definitive measures, thereby preventing FS Karton from defending adequately its interests, contrary to the requirement set out in Article 6.9.

The EC request that the panel be established with the standard terms of reference as provided for in Article 7 of the DSU.

The EC ask that this request be placed on the agenda for the next meeting of the Dispute Settlement Body.
