

ARGENTINA - DEFINITIVE ANTI-DUMPING DUTIES ON POULTRY FROM BRAZIL

Report of the Panel WT/DS241/R

*Adopted by the Dispute Settlement Body
on 19 May 2003*

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I. INTRODUCTION

1.1 On 7 November 2001, Brazil requested consultations with Argentina pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "AD Agreement"), including Article 17.4 thereof, and Article 19 of the *Agreement on Implementation of Article VII of GATT 1994* (the "Agreement on Customs Valuation") concerning the Argentine anti-dumping measures imposed in respect of imports of poultry from Brazil.¹ Argentina and Brazil held consultations on 10 December 2001, but failed to settle the dispute.

1.2 On 19 November 2001, the European Communities requested, pursuant to Article 4.11 of the *DSU*, to be joined in the consultations.²

1.3 On 25 February 2002, Brazil requested the establishment of a panel pursuant to Article XXII of the *GATT 1994*, Article 17 of the *AD Agreement* and Article 6 of the *DSU*.³

1.4 At its meeting on 17 April 2002, the Dispute Settlement Body (the "DSB") established this Panel in accordance with Article 6 of the *DSU* to examine the matter referred to the DSB by Brazil in document WT/DS241/3. At that meeting, the parties

¹ WT/DS241/1.

² WT/DS241/2.

³ WT/DS241/3.

to the dispute also agreed that the Panel should have standard terms of reference. The terms of reference are, therefore, the following:

"To examine, in the light of the relevant provisions of the covered agreements cited by Brazil in document WT/DS241/3, the matter referred by Brazil to the DSB in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."

1.5 On 17 June 2002, Brazil requested the Director-General to determine the composition of the Panel, pursuant to paragraph 7 of Article 8 of the *DSU*. This paragraph provides:

"If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request".

1.6 On 27 June 2002, the Director-General accordingly composed the Panel as follows:⁴

Chairman: Mr. Harsha V. Singh
 Members: Ms. Enie Neri de Ross
 Mr. Michael Mulgrew

1.7 Canada, Chile, the European Communities, Guatemala, Paraguay and the United States reserved their rights to participate in the Panel proceedings as third parties.

1.8 The Panel met with the parties on 25-26 September 2002 and 26 November 2002. It met with the third parties on 26 September 2002.

1.9 The Panel submitted its interim report to the parties on 25 February 2003. The Panel submitted its final report to the parties on 8 April 2003.

II. FACTUAL ASPECTS

2.1 This dispute concerns the imposition by Argentina of anti-dumping measures on imports of poultry from Brazil.

2.2 On 2 September 1997, the Centro de Empresas Procesadoras Avícolas (the "CEPA") filed an application for the initiation of an anti-dumping investigation with the Under-Secretariat for Foreign Trade (the "SSCE"), which subsequently became the Under-Secretariat for Industry, Trade and Mining (the "SSICM"). CEPA alleged that imports of poultry from Brazil into Argentina were taking place at dumped prices and that these imports represented a threat of material injury to the domestic

⁴ WT/DS241/4.

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industry.⁵ On 23 September 1997, the National Foreign Trade Commission (the "CNCE") issued an opinion regarding the representativeness of the domestic industry and, on 21 November 1997, the SSCE accepted the application presented by CEPA.

2.3 On 7 January 1998, the Department of Unfair Trading Practices and Safeguards (the "APCDS"), which subsequently became the Directorate of Unfair Competition (the "DCD"), concluded in its Report on the Feasibility of Initiating an Investigation (the "Report of 7 January 1998") that there was sufficient evidence of dumping to justify initiating an investigation.⁶ On that same date, the CNCE determined in Record No. 405 that there was not sufficient evidence of injury or threat of injury to justify the initiation of an investigation.⁷ On 17 February 1998, CEPA presented new and updated information to the Secretariat for Industry, Trade and Mining (the "SICyM").⁸ On 18 June 1998, the General Directorate for Legal Affairs (the "DGAJ") of the Ministry of the Economy and Public Works and Services (the "MEyOSP"), at the request of the then Under-Secretariat for Foreign Trade, determined that "... in view of the fact that the information submitted by ... CEPA ... was not evaluated by the National Foreign Trade Commission when ruling on injury to the domestic industry in Record No. 405/98, this Directorate-General considers that before proceeding any further, the said National Commission should be asked to intervene once again in order to rule on the items submitted ...".⁹ Following an examination of the new evidence submitted by CEPA, the CNCE determined in Record No. 464 of 22 September 1998 that there was sufficient evidence of threat of injury to justify the initiation of the investigation.¹⁰

2.4 On 20 January 1999, the Secretary for Industry, Trade and Mining (the "Secretary") decided to initiate the anti-dumping investigation concerning poultry from Brazil.¹¹ A Notice of Initiation of the anti-dumping investigation was published in the Official Bulletin on 25 January 1999.

2.5 The CNCE and the DCD sent, on 10 and 16 February 1999, respectively, letters to five Brazilian exporters (i.e., Sadia S.A. ("Sadia"), Avipal S.A. Avicultura e Agropecuaria ("Avipal"), Frigorífico Nicolini Ltda. ("Nicolini"), Seara Alimentos S.A. ("Seara"), and Frangosul S.A. Agro Avícola Industrial ("Frangosul")) *inter alia* notifying them of the initiation of the investigation.¹²

2.6 On 28 June 1999, the CNCE issued its preliminary affirmative injury determination.¹³ On 6 August 1999, the DCD issued its preliminary affirmative dumping determination.¹⁴ On 20 August 1999, the SSCE issued its preliminary affirmative determination on causal link between the allegedly dumped imports and the injury to the domestic industry.¹⁵ No provisional measures were imposed.

2.7 On 15 September 1999, various Brazilian exporters, namely Cooperativa Central de Laticínios do Paraná ("CCLP"), Cooperativa Central Oeste Catarinense

⁵ Exhibit BRA-1.

⁶ Exhibit BRA-2.

⁷ Exhibit BRA-3.

⁸ Exhibit BRA-4.

⁹ Exhibit BRA-5.

¹⁰ Exhibit BRA-6.

¹¹ Exhibit BRA-7.

¹² Exhibits BRA-8 and BRA-9.

¹³ Exhibit BRA-10.

¹⁴ Exhibit BRA-11.

¹⁵ Exhibit BRA-12.