World Trade Review (2015), 14: 3, 531–542
© Cambridge University Press

The case summaries that we introduce in this issue of *The World Trade Review* aim to regularly update our readers on developments in case law and practice in the WTO and the most important investment fora. We will be providing factual accounts of recent jurisprudence and of the most important legislative evolutions in international trade and international investment law.

Case Summaries: WTO Disputes

The following summaries provide a brief factual background and describe the key findings of recent WTO panel and Appellate Body reports.

doi:10.1017/S1474745615000300

Argentina – Import Measures (DS438, DS444, DS445)

Adopted by DSB	26 January 2015
Complainants	European Union; Japan; United States
Respondent	Argentina
Third Parties	Australia; Canada; China; Ecuador; Guatemala; India; Israel; Korea, Republic of; Norway; Saudi Arabia, Kingdom of; Switzerland; Chinese Taipei; Thailand; Turkey

Measures at Issue

(1) The procedure connected to the Advance Sworn Import Declaration (Declaración Jurada Anticipada de Importación, DJAI), required by the Argentine Government since February 2012 for most imports of goods into Argentina; and (2) the imposition by Argentine authorities on economic operators of one or more trade-related requirements (TRRs) as a condition to import into Argentina or to obtain certain benefits.

Main Adopted Findings of the Panel and Appellate Body

Terms of Reference

The Appellate Body rejected Argentina's claim that the Panel erred in failing to find that the unwritten 'overarching' TRRs measure was outside the Panel's terms of reference because it was not identified in the requests for consultations. The Appellate Body upheld the Panel's finding that the panel requests enunciated the same measure in

https://doi.org/10.1017/S1474745615000300 Published online by Cambridge University Press

different terms than did the consultations requests but that this reformulation did not expand the scope or change the essence of the disputes.[1]

The Appellate Body reversed the Panel's finding that 23 specific instances of application of TRRs were outside the Panel's terms of reference because they were inadequately described in the European Union's panel request. Taking into account the request's inclusion of a list of press releases and news articles and the web pages where they could be accessed, and the content of those documents, the Appellate Body found that the panel request sufficiently described the measures to satisfy the standard in Article 6.2 of the DSU. The Appellate Body did not complete the analysis regarding the GATT-consistency of these 23 measures, however, because the conditions on which the European Union requested it to do so were not met.[2]

GATT

The Appellate Body rejected Argentina's claim that the Panel erred in finding the existence of a single unwritten TRRs measure. Thus, the Appellate Body upheld the Panel's finding that the unwritten TRRs measure exists and, as a consequence, also upheld the Panel's findings that the TRRs measure is inconsistent with Articles III:4 and XI:1 of the GATT 1994.[3]

With respect to the DJAI procedure, the Appellate Body rejected Argentina's claims that (1) the Panel erred in its interpretation of Article XI:1 of the GATT 1994 by failing to apply a proper analytical framework; (2) the Panel erred in its understanding of the scope of application of Article VIII of the GATT 1994 in relevant respects; and (3) the Panel erred in its application of Article XI:1 of the GATT 1994 to the DJAI procedure. Thus, the Appellate Body upheld the Panel's finding that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994.[4]

DSU Article 11

The Appellate Body rejected Argentina's claim under Article 11 of the DSU that the Panel's findings regarding Japan's 'as such' claims against the TRRs measure lacked an evidentiary basis or were unsupported by adequate and coherent reasoning. In doing so, however, the Appellate Body clarified that this did not amount to an endorsement of the Panel's findings in this context.[5]

GEOFFREY CARLSON
Works in the WTO Secretariat but writes in a wholly personal capacity
Email: gcarls@gmail.com

1 Appellate Body Report, *Argentina – Import Measures*, paras. 5.1–5.31.
2 Ibid., paras. 5.32–5.91.
3 Ibid., paras. 5.204–5.205.
4 Ibid., paras. 5.287–5.288.
5 Ibid., paras. 5.181, 5.184 and 5.206.

https://doi.org/10.1017/S1474745615000300 Published online by Cambridge University Press