

IN THE WORLD TRADE ORGANISATION

WT/DS438/444/445

Argentina – Measures Affecting the Importation of Goods

Oral Statement

by

Norway as a Third Party

Geneva

25 September 2013

I. INTRODUCTION

Madam Chair, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings.
2. In its written statement, Norway addressed some interpretative issues relating to the transparency obligations contained in Article X:1 of the GATT 1994 and Articles 1.4(a) and 3.3 of the *Agreement on Import Licencing Procedures* (which I will hereinafter refer to as the *ILP Agreement*). These transparency obligations reflect a fundamental objective of the WTO, namely to ensure predictable conditions for international trade. This fundamental objective is further substantiated, among others, through the provisions of the GATT 1994 Article X:3(a) which mandates that:

“Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.”

3. In *US - Shrimp*, the Appellate Body made it clear that “Article X:3(a) of the GATT 1994 establishes certain minimum standards for transparency and procedural fairness in the administration of trade regulations”.¹
4. Furthermore, Members are obliged to comply with *all* three requirements in letter (a). In *Thailand - Cigarettes (Philippines)*, the Panel stated:

“The obligations of uniformity, impartiality and reasonableness are legally independent and the WTO Members are obliged to comply with all three requirements. This means that [...] a violation of any of the three obligations will lead to a violation of the obligations under Article X:3(a).”²

5. Compliance with this provision is important, as transparent rules and a fair and predictable administration of such rules are a prerequisite for international trade.

¹ Appellate Body Report, *United States - Import Prohibition of Certain Shrimp and Shrimp Products (US - Shrimp)*, WT/DS58/AB/R, para. 183.

² Panel Report, *Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines (Thailand - Cigarettes (Philippines))*, WT/DS371/R, para.7.867.

6. Next, we would like to comment briefly on the relationship between the GATT 1994 and the *ILP Agreement*. In its first written submission, Argentina submits that the *ILP Agreement* is *lex specialis* to the GATT.³
7. Generally, Norway’s view is that all WTO Agreements must be interpreted harmoniously, so that all relevant provisions are given meaning. We find support for this view in WTO jurisprudence. In *Argentina – Footwear (EC)*, the Appellate Body considered the relationship between the GATT 1994 and the *Agreement on Safeguards* and stated amongst other that:

“the provisions of Article XIX of the GATT 1994 *and* the provisions of the *Agreement on Safeguards* are *all* provisions of one treaty, the *WTO Agreement*. They entered into force as part of that treaty at the same time. They apply equally and are equally binding on all WTO Members. [...] a treaty interpreter must read all applicable provisions of a treaty in a way that gives meaning to *all* of them, harmoniously. And, an appropriate reading of this "inseparable package of rights and disciplines" must, accordingly, be one that gives meaning to *all* the relevant provisions of these two equally binding agreements.”⁴
8. Moreover, in *US - Softwood Lumber IV*, the Appellate Body further elaborated on the relationship between the GATT 1994 and the *Agreement on Safeguards* and underlined that the provisions of the *Agreement on Safeguards* and the GATT 1994 apply on a cumulative basis.⁵
9. These statements are clearly relevant also for the interpretation of the GATT 1994 and the *ILP Agreement*.
10. The General interpretative note to Annex 1A sets out the relationship between the GATT 1994 and the other agreements contained in Annex 1A. The *ILP Agreement* is a part of Annex 1A and hence the interpretative note is applicable to the relationship with the GATT 1994. The interpretative note makes it clear that in the event of conflict between a provision of the GATT 1994 and a provision of another agreement in Annex 1A, the provision of the other agreement shall prevail to the extent of the conflict.⁶

³ Argentina’s First Written Submission, paras. 170-171.

⁴ Appellate Body Report, *Argentina - Safeguard Measures on Imports of Footwear (Argentina - Footwear (EC))*, WT/DS121/AB/R para. 81.

⁵ Appellate Body Report, *United States - Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada (US- Softwood Lumber IV)*, WT/DS257/AB/R), para. 134.

⁶ Annex 1A, Multilateral agreements on trade in goods, “General interpretative note to Annex 1A”.

11. In *European Communities – Bananas (III)*, the complainants raised claims in respect of the European Communities’ import licensing regime under GATT 1994, the *ILP Agreement* and the TRIMs Agreement. In the interpretation of the concept of “conflict” in the General interpretative note, the Panel emphasized that situations of complementary obligations would not be in “conflict” within the meaning of the General interpretative note.”⁷
12. With regard to the relationship between the *ILP Agreement* and the GATT 1994, we note that the preamble to the *ILP Agreement* recognize the provisions of the GATT 1994 as they apply to import licensing procedures and that Members also express a desire to ensure that import licensing procedures are not utilized in a manner contrary to the principles and obligations of the GATT 1994.
13. With this in mind, the Panel must examine closely whether there is a conflict between the relevant provisions of the GATT 1994 and the *ILP Agreement* in this case or whether the provisions are in fact complementing each other.
14. Madam Chair, distinguished Members of the Panel, this concludes Norway’s statement today.

I thank you for your attention.

⁷ Panel Report, *European Communities - Regime for the Importation, Sale and Distribution of Bananas (EC – Bananas III)*, WT/DS27/R/USA, paras. 7.160-7.161.