

**EUROPEAN COMMUNITIES – MEASURES AFFECTING THE TARIFF QUOTA  
FOR FRESH OR CHILLED GARLIC**

Request for Consultations by Argentina

The following communication, dated 6 September 2006, from the delegation of Argentina to the delegation of the European Communities and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The Government of Argentina has instructed me to request consultations with the European Communities pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) with regard to certain measures taken by the EC that affect the tariff quota for fresh or chilled garlic (tariff item 0703 20 00) to the detriment of Argentina's rights under the WTO Agreements. The said quota was the subject of negotiations between the EC and Argentina under Article XXVIII which resulted in the Agreement in the form of an Exchange of Letters contained in document G/SECRET/11/Add.1<sup>1</sup>, approved by Decision 2001/404/EC of 28 May 2001.

In the framework of the ongoing negotiations under Article XXIV:6 of the GATT 1994 on the accession of ten new member States to the European Union, the EC conducted bilateral negotiations with the People's Republic of China as a result of which it adopted measures providing for a 20,500 tonne increase, for China, in the volume of the tariff quota for garlic. Argentina was not informed of these negotiations although it was conducting its own negotiations under Article XXIV:6 of the GATT 1994 in connection with the mentioned enlargement process. Argentina considers that through the negotiations with the People's Republic of China, the EC has modified the tariff quota for garlic in breach of Argentina's initial negotiating right.

The measures referred to above include, but are not limited to, the following:

- Council Decision 2006/398/EC, published in the Official Journal of the EU on 8 June 2006, approving the bilateral agreement concerning the Community tariff quota for fresh or chilled garlic under tariff item 0703 20 00 resulting from the recent negotiations conducted between the EC and the People's Republic of China pursuant to Articles XXIV:6 and XXVIII of the GATT 1994<sup>2</sup>;

<sup>1</sup> Agreement in the form of an Exchange of Letters between Argentina and the EC of 28 May 2001.

<sup>2</sup> Agreement in the form of an Exchange of Letters between the EC and the People's Republic of China, the Annex of which provides for an increase of 20,500 tonnes in the quantity allocated to the People's Republic of China in the Community tariff quota for garlic, fresh or chilled, under tariff item 0703 20 00, published in the Official Journal of the EU on 8 June 2006.

- Commission Regulation (EC) No. 991/2006 amending Regulation (EC) No. 1870/2005 – published in the Official Journal of the EU on 1 July 2006 – implementing the decision to grant the People's Republic of China an increase of 20,500 tonnes in the tariff quota for garlic as from the 2006/2007 season.

For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures.

Argentina submits that the EC has disregarded its initial negotiating right under Article XXVIII and the Understanding on the Interpretation of Article XXVIII. That right is the result of the renegotiation of the original concessions relating to item 0703 20 00 conducted with Argentina in 2001 in view of its principal supplying interest – at the request of the EC itself – and which resulted in the opening of the tariff quota.

At the same time, since Regulation (EC) No. 991/2006 provides for the allocation of the additional volume granted to the People's Republic of China as from the 2006/2007 season (beginning in June 2006), the current situation impairs the concession initially negotiated with Argentina.

The violation of Article XXVIII by failing to follow the procedure established for renegotiation, and in particular of the provisions of Regulation (EC) No. 991/2006, alters the general level of reciprocal and mutually advantageous concessions and undermines the security and predictability of the tariff concessions which the Article XXVIII procedure is intended to guarantee.

Argentina also considers these measures to be contrary to the provisions of Article XXIV:6 of the GATT 1994 and paragraph 6 of the Understanding on the Interpretation of that Article, since these provisions refer, for the negotiation of concessions in connection with the formation or enlargement of a customs union, to the procedures established in Article XXVIII of the GATT 1994 and related provisions.

In view of these considerations, Argentina considers that the EC measures at issue violate, *inter alia* and not exclusively, the following provisions:

- Article XXIV:6 of the GATT 1994 and the Understanding on the Interpretation of that Article, since they provide for the application of the procedure set forth in Article XXVIII and related provisions;
- Article XXVIII of the GATT 1994, the Understanding on the Interpretation of that Article and related provisions (Guidelines on Procedures for Negotiations under Article XXVIII), since the EC has modified the tariff quota without prior negotiations with Argentina, a Member with initial negotiating rights, thereby violating the established mechanism for the modification of concessions and at the same time altering the existing general level of reciprocal and mutually advantageous concessions;
- Article XVI:4 of the Marrakech Agreement Establishing the World Trade Organization, since as a result of the measures at issue, the EC is in breach of the obligations set forth in that Agreement as regards the conformity of its laws, regulations and administrative procedures with its obligations under the WTO Agreements.

Consequently, it is proposed that the requested consultations be held as soon as possible at a date and venue to be agreed upon by both Members. In addition, I have been instructed to indicate that my Government reserves the right to raise further factual or legal claims during the consultations.

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