WORLD TRADE ORGANIZATION

WT/DS393/1
G/L/887
G/ADP/D78/1
19 May 2009

(09-2434)

Original: Spanish

CHILE – ANTI-DUMPING MEASURES ON IMPORTS OF WHEAT FLOUR FROM ARGENTINA

Request for Consultations by Argentina

The following communication, dated 14 May 2009, from the delegation of Argentina to the delegation of Chile and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Chile pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, paragraph 1 of Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement" or "AD") with respect to the anti-dumping measures taken by the Republic of Chile on imports of wheat flour from Argentina, as well as any amendments thereto or extensions thereof[1] and any related measure; and also with respect to certain provisions of Law No. 18.525[2] whose text was consolidated, coordinated and rationalized by Decree having Force of Law No. 31 of 2005[3], and the Supreme Decree of the Ministry of Finance No. 575.[4]

Background

On 11 April 2008, the *Asociación de Molineros del Centro A.G.* submitted a request for the initiation of an investigation into alleged dumping and the application of a provisional anti-dumping measure on imports of wheat flour from Argentina. On 18 April 2008, in Session No. 302[5], the National Commission responsible for investigating distortions in the price of imported goods ("the Commission") decided to initiate an investigation into possible dumping of imports of wheat flour from Argentina.

On 3 July 2008, the Minister of Finance, by order of the President, through Exempt Decree No. 737[6], and taking into account Record No. 303[7] of the Commission, decided to impose a

---

[1] Including any further determinations made pursuant to court order or remand.
[2] Published in the Official Journal of 30 June 1986.
[3] Published in the *Boletín Oficial de la República de Chile* (Official Gazette of the Republic of Chile) of 22 April 2005.
[4] Published in the Official Gazette of the Republic of Chile of 20 August 1993.
[5] Record of Session No. 302, published in the Official Gazette of the Republic of Chile on 25 April 2008.
[6] Published in the Official Gazette of the Republic of Chile of 7 July 2008.

provisional anti-dumping duty of 30.3 per cent on imports of wheat flour from Argentina, classified under tariff heading 1101.0000 of the Customs Tariff.

Finally, on 2 January 2009, the Minister of Finance, by order of the President, through Exempt Decree No. 1[8], and taking into account Record No. 307[9] of the Commission, decided to conclude the investigation with the imposition of a definitive anti-dumping duty of 30.3 per cent on imports of wheat flour from Argentina, classified under tariff heading 1101.0000 of the Customs Tariff.

Legal background

1. Investigation conducted, determinations made and duties imposed

Argentina considers that the investigation conducted by the Chilean authorities, the determinations made and the duties imposed violate Chile's obligations under the provisions of GATT 1994 and the Anti-Dumping Agreement. In particular, Argentina considers that the anti-dumping measures on wheat flour from Argentina are inconsistent with, at the least, Articles 1, 2, 3, 5, 6, 7, 9, 12, 13 and 18 of the Anti-Dumping Agreement and Annex II thereto; Article XVI of the *Marrakesh Agreement establishing the World Trade Organization* ("WTO Agreement"); and Article VI of the GATT 1994, for the reasons set out below:

Article 1 of the Anti-Dumping Agreement:

- because the anti-dumping measures were not applied under the circumstances provided for in Article VI of GATT 1994 and pursuant to an investigation initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement.

Article 2 of the Anti-Dumping Agreement; in particular but not exclusively:

- **Article 2.1** of the Anti-Dumping Agreement, because the Chilean authorities did not determine the existence of dumping by comparing the export price of wheat flour exported to Chile with the normal value of the like product destined for internal consumption in Argentina;

- **Article 2.2** of the Anti-Dumping Agreement, because the Chilean authorities did not reach a reasoned conclusion based on an unbiased and objective evaluation of the facts when they determined that domestic sales of wheat flour in Argentina did not take place in the ordinary course of trade;

- **Article 2.2.1** of the Anti-Dumping Agreement, because the Chilean authorities determined that domestic sales of wheat flour on the Argentine domestic market were not in the ordinary course of trade and that these sales should be disregarded in determining the normal value, without have previously determined that: (a) these sales were made within an extended period of time; (b) in substantial quantities; and (c) at prices which did not provide for the recovery of all costs within a reasonable period of time;

---

[7] Session No. 303, held on 27 June 2008.
[8] Published in the Official Gazette of the Republic of Chile of 7 January 2009.
[9] Session No. 307, held on 29 December 2008.

- **Article 2.2.2** of the Anti-Dumping Agreement, because when constructing the normal value the Chilean authorities did not base their determination regarding the amounts for administrative, selling and general costs, and for profits, on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation; and even supposing that the investigating authority had considered that these amounts could not be determined on the basis of the ordinary course of trade, the normal value was not constructed according to the methods laid down in the list in this provision; and

- **Article 2.4** of the Anti-Dumping Agreement, because a fair comparison between the export price and the normal value was not made; this comparison was not made at the same level of trade and in respect of sales made at as nearly as possible the same time. The Chilean authorities did not make due allowance, in this case, on its merits, for differences which affect price comparability, according to the indicative list mentioned in this provision.

Article VI of the GATT 1994 and **Article 3** of the Anti-Dumping Agreement; in particular but not exclusively:

- **Article 3.1** of the Anti-Dumping Agreement, because the Chilean authorities, when determining the threat of material injury, did not base themselves on positive evidence or an objective examination of: (a) the volume of the dumped imports and their effect on prices in the domestic market for like products; and (b) the consequent impact of these imports on domestic producers of such products;

- **Article 3.2** of the Anti-Dumping Agreement, because the Chilean authorities did not consider during the investigation that there had not been a significant increase in imports of wheat flour from Argentina, either in absolute terms or relative to production or domestic consumption in Chile; they did not consider either that there had not been significant price undercutting by the imports or that the effect of such imports was not to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree;

- **Article 3.4** of the Anti-Dumping Agreement, because the Chilean authorities did not examine the impact of the imports of wheat flour from Argentina on the Chilean domestic industry, including an evaluation of all relevant economic factors and indices having a bearing on the state of this industry, including those listed in Article 3.4 itself;

- **Article 3.1, Article 3.5 of the Anti-Dumping Agreement and paragraph 1 of Article VI of the GATT**, because the Chilean authorities did not demonstrate that, through the effects of the alleged dumping, the imports investigated had caused or threatened to cause injury to the Chilean domestic industry; they did not base their determination of a causal relationship between the imports allegedly dumped and the injury to the domestic industry on positive evidence or an objective examination of all relevant evidence; they did not examine known factors other than the allegedly dumped imports from Argentina which at the same time could have injured the domestic industry, and because they attributed the injuries caused by these factors to the imports of wheat flour from Argentina;

- **Article 3.7** of the Anti-Dumping Agreement, because the Chilean authorities did not base their determination of a threat of material injury on facts but merely on allegation, conjecture or remote possibility; they did not undertake any examination to show that this threat of material injury was clearly foreseen and imminent; and because when making the determination of threat of material injury, the Chilean authorities did not consider the factors listed in Article 3.7 or other known factors; and

- **Article 3.8** of the Anti-Dumping Agreement, because the Chilean authorities did not take the special care prescribed when considering and deciding on the application of anti-dumping measures in cases where there is a threat of material injury.

Article 5 of the Anti-Dumping Agreement, in particular but not exclusively:

- **Article 5.2** of the Anti-Dumping Agreement, because the application referred to in Article 5.1 of the AD did not include evidence of: (a) dumping; (b) injury within the meaning of Article VI of GATT 1994 as interpreted by the Anti-Dumping Agreement; and (c) a causal link between the dumped imports and the alleged injury; the application for initiation submitted was based on simple assertion, unsubstantiated by relevant evidence; and, lastly, because the application did not contain all information reasonably available to the applicant in accordance with the indicative list in Article 5.2 itself;

- **Article 5.3** of the Anti-Dumping Agreement, because the Chilean authorities did not examine the accuracy and adequacy of the evidence provided in the application to determine whether there was sufficient evidence to justify the initiation of an investigation;

- **Article 5.3** and Article 5.4 of the Anti-Dumping Agreement, because the Chilean authorities, when determining that the application had been made by or on behalf of the domestic industry, did not examine the accuracy and adequacy of the evidence provided, and did not base themselves on an examination of the level of support for or opposition to the application expressed by domestic producers of the like product; and

- **Article 5.8** of the Anti-Dumping Agreement, because the Chilean authorities did not satisfy themselves that there was not sufficient evidence of either dumping or of injury to justify proceeding with the case and, therefore, did not reject the application submitted pursuant to Article 5.1 of the AD, promptly terminating the investigation.

Article 6 and Annex II of the Anti-Dumping Agreement, in particular but not exclusively:

- **Article 6.1, Article 6.1.3 and Article 6.2** of the Anti-Dumping Agreement, because the Chilean authorities failed to give all interested parties notice of the information required and ample opportunity to present in writing all relevant evidence; they did not provide the full text of the application for initiation of an investigation to known exporters; and did not give all interested parties full opportunity for the defence of their interests;

- **Article 6.6** of the Anti-Dumping Agreement, because the Chilean authorities did not satisfy themselves as to the accuracy of the information supplied by the applicants before basing their findings on it;

- **Article 6.8 and Annex II** of the Anti-Dumping Agreement, because the Chilean authorities made preliminary and final determinations on the basis of the facts available without giving all exporters or producers of wheat flour in Argentina an opportunity to submit the necessary information or provide it within a reasonable period; and because, when interpreting **paragraph 8 of Article 6 of the AD**, the provisions of Annex II to the aforementioned Agreement were not observed; and

- **Article 6.10** of the Anti-Dumping Agreement, because the Chilean authorities did not determine the individual margin of dumping for each known exporter of wheat flour investigated; as the number of exporters and producers was not so large as to make such a determination impracticable, the authorities should not have limited their examination to certain interested parties.

Article 7 of the Anti-Dumping Agreement, in particular but not exclusively:

- **Article 7.1** of the Anti-Dumping Agreement, because when applying the provisional measure on imports of wheat flour from Argentina: (i) this was not done pursuant to an investigation initiated in accordance with the provisions of Article 5, no notice was given to all interested parties and they were not given adequate opportunities to submit information and make comments; (ii) a reasoned preliminary determination was not made, on the basis of positive evidence and an objective and unbiased evaluation of all relevant evidence, of dumping and consequent injury to a domestic industry; and (iii) it was incorrectly judged that the provisional measure applied for this purpose was necessary to prevent injury being caused during the investigation; and

- **Article 7.5** of the Anti-Dumping Agreement, because the Chilean authorities did not follow the relevant provisions of Article 9, as required by this provision.

Article 9 of the Anti-Dumping Agreement, in particular but not exclusively:

- **Article 9.2** of the Anti-Dumping Agreement, because the Chilean authorities imposed an anti-dumping duty on imports of wheat flour from Argentina without collecting this duty in the appropriate amount; and they named the country supplying the product, Argentina, even though it was not impracticable to name the supplier or suppliers involved; and

- **Article 9.3** of the Anti-Dumping Agreement, because the Chilean authorities exceeded the margin of dumping by not observing the provisions of Article 2.

Article 12 of the Anti-Dumping Agreement, in particular but not exclusively:

- **Article 12.1** of the Anti-Dumping Agreement, because the Chilean authorities did not satisfy themselves of the existence of sufficient evidence to justify the initiation of an anti-dumping investigation, pursuant to Article 5 of the AD; and because they did not notify all interested parties;

- **Article 12.1.1** of the Anti-Dumping Agreement, because the public notices of initiation of the investigation did not contain, nor otherwise make available through a separate report, adequate information according to the list in Article 12.1.1 itself;

- **Article 12.2** of the Anti-Dumping Agreement, because the public notices of the preliminary and final determinations did not set forth, or otherwise make available through a separate report, in sufficient detail, the findings and conclusions reached on all issues of fact and law by the Chilean authorities; and

- **Article 12.2.1** of the Anti-Dumping Agreement, because the public notices of the imposition of provisional measures did not set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury; and because these notices or reports did not contain the information prescribed in the list in Article 12.2.1.

Article 18 of the Anti-Dumping Agreement:

- **Article 18.1** of the Anti-Dumping Agreement, because the Chilean authorities took specific action against the alleged dumping of imports of wheat flour from Argentina in a manner inconsistent with GATT 1994 and with the Anti-Dumping Agreement; and

- **Article 18.3** of the Anti-Dumping Agreement, because the provisions of the Anti-Dumping Agreement were not applied to this investigation, which was initiated pursuant to an application made after the date of entry into force of the WTO Agreement for Chile.

2. Chilean legislation applicable to anti-dumping procedures

In addition to the investigation and the specific measures outlined above, Argentina wishes to extend its consultations in respect of the following provisions of Law No. 18.525[10], whose text was revised, coordinated and consolidated by the Decree having Force of Law No. 31 of 2005[11], ("Law No. 18.525"), and the Supreme Decree of the Ministry of Finance No. 575, published in the Official Bulletin of the Republic of Chile of 20 August 1993 ("Decree No. 575"). These provisions appear to be inconsistent with Chile's obligations pursuant to the Anti-Dumping Agreement, GATT 1994 and the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement").

(i) The competence of the Chilean authorities for the imposition of anti-dumping duties

It appears that the following conclusions can be drawn from Articles 8 and 9 of Law No. 18.525 and Articles 1 and 16 of Decree No. 575: (a) regarding the application of anti-dumping measures, Chilean legislation does not lay down any time-limits for the final decision, leaving the interested parties during an investigation in a situation of uncertainty regarding it; and (b) in their final decision on the application of anti-dumping measures, the Chilean authorities do not appear to be obliged to base their conclusions on the factual or legal background.

[10] Published in the Official Journal of 30 June 1986.
[11] Published in the Official Bulletin of the Republic of Chile of 22 April 2005.

In particular, but not exclusively, these provisions appear to be inconsistent with:

- **Article 1** of the Anti-Dumping Agreement, which requires Members to apply anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement;

- **Article 6.14** of the Anti-Dumping Agreement, which requires Members to proceed expeditiously in reaching preliminary or final determinations, whether affirmative or negative, and to apply provisional or final measures in accordance with the relevant provisions of the Anti-Dumping Agreement;

- **Article 5.10** of the Anti-Dumping Agreement, which provides that investigations shall be concluded within one year, and in no case more than 18 months, after their initiation;

- **Article 18.1** of the Anti-Dumping Agreement, which requires Members not to take specific action against dumping of exports from another Member except in accordance with the provisions of GATT 1994, as interpreted by the Anti-Dumping Agreement;

- **Article 18.3** of the Anti-Dumping Agreement, which states that the provisions of the Anti-Dumping Agreement shall apply to investigations initiated on or after the date of entry into force for a Member of the WTO Agreement;

- **Article 18.4** of the Anti-Dumping Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, no later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement; and

- **Paragraph 4 of Article XVI** of the WTO Agreement, which requires each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

(ii) The definition of dumping and the grounds for imposing anti-dumping duties

It appears that the following conclusions can be drawn from Article 8 of Law No. 18.525 and the second and third paragraphs of Article 1 of Decree No. 575: **(a)** the definition of dumping provided in Chilean legislation is not consistent with the provisions of the Anti-Dumping Agreement and GATT 1994, and the grounds for imposing an anti-dumping duty include an extremely broad and imprecise range of possibilities, going beyond the grounds for imposition of duties prescribed by GATT 1994 and the Anti-Dumping Agreement.

In particular, but not exclusively, these provisions appear to be inconsistent with:

- **Article 1** of the Anti-Dumping Agreement, which requires Members to apply anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement;

- **Article 2.1** of the Anti-Dumping Agreement, which provides that a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country;

- **Article 18.1** of the Anti-Dumping Agreement, which requires Members not to take specific action against dumping of exports from another Member except in accordance with the provisions of GATT 1994, as interpreted by the Anti-Dumping Agreement;

- **Article 18.3** of the Anti-Dumping Agreement, which provides that the provisions of the Anti-Dumping Agreement shall apply to investigations initiated on or after the date of entry into force for the Member concerned of the WTO Agreement;

- **Article 18.4** of the Anti-Dumping Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement; and

- **Paragraph 4 of Article XVI** of the WTO Agreement, which requires each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

(iii) Who may initiate anti-dumping procedures

It appears that the following conclusions can be drawn from Article 10 of Decree No. 575: (a) investigations intended to determine the existence, degree and effect of the alleged dumping may be initiated at the request of parties other than those authorized by the Anti-Dumping Agreement and without their having the necessary level of support from domestic producers of the like product that would allow the authority to conclude that the application is considered to have been made by the domestic industry or on its behalf; and (b) that the requirements laid down in Article 10 of Decree No. 575 concerning the admissibility of applications for initiation are not consistent with the requirements laid down in Article 5.2 of the Anti-Dumping Agreement.

In particular, but not exclusively, this provision appears to be inconsistent with:

- **Article 1** of the Anti-Dumping Agreement, which requires Members to apply anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement;

- **Article 5.1** of the Anti-Dumping Agreement, which requires that investigations to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry, except as provided for in paragraph 6 of Article 5;

- **Article 5.2** of the Anti-Dumping Agreement, which requires that the application contain such information as is reasonably available to the applicant on the points in the indicative list mentioned in this provision;

- **Article 5.4** of the Anti-Dumping Agreement, which requires that the application should have the necessary degree of support from domestic producers of the like product to enable the authority to determine that it is considered to have been made by the domestic industry or on its behalf;

- **Article 18.1** of the Anti-Dumping Agreement, which requires Members not to take specific action against dumping of exports from another Member except in accordance with the provisions of GATT 1994, as interpreted by the Anti-Dumping Agreement;

- **Article 18.3**, which provides that the provisions of the Anti-Dumping Agreement shall apply to investigations initiated on or after the date of entry into force for the Member concerned of the WTO Agreement;

- **Article 18.4** of the Anti-Dumping Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement;

- **Paragraph 4 of Article XVI** of the WTO Agreement, which requires each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

(iv) Provisional measures

1. It appears that the following conclusions can be drawn from Article 22 of Decree No. 575: (a) if the Commission determines that there is no dumping in the price of the goods investigated or there is no injury or threat of material injury to the domestic industry, the Commission is not obliged to request the President of the Republic that the provisional measures imposed be revoked; (b) there is no provision whatsoever obliging the President, at the Commission's request, to revoke the provisional measures in the circumstances referred to in the preceding sentence; (c) there is no provision whatsoever obliging the President, under the circumstances described in sentence (a) in this paragraph, to revoke the provisional measures immediately.

In particular, but not exclusively, this provision appears to be inconsistent with:

- **Article 1** of the Anti-Dumping Agreement, which requires Members to apply anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement;

- **Article 7.1(ii)**, which provides that provisional measures may be applied only if a preliminary affirmative determination has been made of dumping and consequent injury to the domestic industry;

- **Article 18.1** of the Anti-Dumping Agreement, which requires Members not to take specific action against dumping of exports from another Member except in accordance with the provisions of GATT 1994, as interpreted by the Anti-Dumping Agreement;

- **Article 18.3**, which provides that the provisions of the Anti-Dumping Agreement shall apply to investigations initiated on or after the date of entry into force for the Member concerned of the WTO Agreement;

- **Article 18.4** of the Anti-Dumping Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement;

- **Paragraph 4 of Article XVI** of the WTO Agreement, which requires each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

2. It appears that the following conclusions can be drawn from Articles 16, 19 and 20 of Decree No. 575: (a) the Chilean implementing authority is empowered to impose provisional measures even before the expiry of 60 days following the date of initiation of the investigation; and (b) provisional duties may be applied for a period exceeding that laid down in Article 7.4 of the Anti-Dumping Agreement inasmuch as the provisional measures may be applied up until the date on which the final decision is taken and the investigating authority is not limited to any period of time during which it has to take this decision.

In particular, but not exclusively, these provisions appear to be inconsistent with:

- **Article 1** of the Anti-Dumping Agreement, which requires Members to apply anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement;

- **Article 7.3** of the Anti-Dumping Agreement, which determines that provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation;

- **Article 7.4** of the Anti-Dumping Agreement, which requires that provisional measures shall be applied for as short a period as possible, not exceeding four months or, on decision of the competent authority and upon request by exporters representing a significant percentage of the trade involved, for a period not exceeding six months. When the authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months respectively;

- **Article 18.1** of the Anti-Dumping Agreement, which requires Members not to take specific action against dumping of exports from another Member except in accordance with the provisions of GATT 1994, as interpreted by the Anti-Dumping Agreement;

- **Article 18.3**, which provides that the provisions of the Anti-Dumping Agreement shall apply to investigations initiated on or after the date of entry into force for the Member concerned of the WTO Agreement;

- **Article 18.4** of the Anti-Dumping Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement;

- **Paragraph 4 of Article XVI** of the WTO Agreement, which requires each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

3. It appears from Articles 19 and 21 of Decree No. 575 that the Chilean implementing authority would be empowered to impose provisional duties without having initiated an investigation pursuant to the provisions of Article 5 of the Anti-Dumping Agreement and without having given all interested parties adequate opportunities to submit information and make comments.

In particular, but not exclusively, these provisions appear to be inconsistent with:

- **Article 1** of the Anti-Dumping Agreement, which requires Members to apply anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement;

- **Article 7.1(i)** of the Anti-Dumping Agreement, which provides that provisional measures may be applied only if an investigation has been initiated in accordance with the provisions of Article 5 and interested parties have been given adequate opportunities to submit information and make comments;

- **Article 18.1** of the Anti-Dumping Agreement, which requires Members not to take specific action against dumping of exports from another Member except in accordance with the provisions of GATT 1994, as interpreted by the Anti-Dumping Agreement;

- **Article 18.3**, which provides that the provisions of the Anti-Dumping Agreement shall apply to investigations initiated on or after the date of entry into force for the Member concerned of the WTO Agreement;

- **Article 18.4** of the Anti-Dumping Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement;

- **Paragraph 4 of Article XVI** of the WTO Agreement, which requires each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

(v) Absence of a judicial review mechanism

An examination of Law No. 18.525 and Decree No. 575 leads to the conclusion that there are no provisions for internal mechanisms to review administrative measures relating to administrative determinations or examinations in respect of anti-dumping through a judicial, arbitral or administrative body that is independent of the authority making the determination or conducting the examination.

The absence of an independent review procedure, in the sense described, could be inconsistent, in particular, but not exclusively, with the following rules:

- **Article 1** of the Anti-Dumping Agreement, which requires Members to apply anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement;

- **Article 13** of the Anti-Dumping Agreement, which requires each Member, whose national legislation contains provisions on anti-dumping measures, to maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11; it being understood that such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question;

- **Article 18.1** of the Anti-Dumping Agreement, which requires Members not to take specific action against dumping of exports from another Member except in accordance with the provisions of GATT 1994, as interpreted by the Anti-Dumping Agreement;

- **Article 18.3**, which provides that the provisions of the Anti-Dumping Agreement shall apply to investigations initiated on or after the date of entry into force for the Member concerned of the WTO Agreement;

- **Article 18.4** of the Anti-Dumping Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement;

- **Paragraph 4 of Article XVI** of the WTO Agreement, which requires each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

(vi) Failure to adapt Chile's anti-dumping regulations subsequent to the entry into force of the WTO Agreements

From the analysis of the inconsistencies in Chile's regulations described above and the fact that Decree No. 575 of 1993 precedes the date of entry into force of the WTO Agreement for Chile, the following may be concluded: (a) that Chile did not adopt the necessary measures to ensure that its

anti-dumping regulations are consistent with the provisions of GATT 1994 and the Anti-Dumping Agreement; and, consequently, (b) that the provisions of the Anti-Dumping Agreement, as a whole, do not apply to the investigations and reviews of existing measures.

In particular, but not exclusively, these provisions appear inconsistent with:

- **Article 1** of the Anti-Dumping Agreement, which requires Members to apply anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement;

- **Article 18.1** of the Anti-Dumping Agreement, which requires Members not to take specific action against dumping of exports from another Member except in accordance with the provisions of GATT 1994, as interpreted by the Anti-Dumping Agreement;

- **Article 18.3**, which provides that the provisions of the Anti-Dumping Agreement shall apply to investigations initiated on or after the date of entry into force for the Member concerned of the WTO Agreement;

- **Article 18.4** of the Anti-Dumping Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Agreement;

- **Paragraph 4 of Article XVI** of the WTO Agreement, which requires each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

Chile's measures identified in this request also appear to nullify or impair benefits accruing to Argentina directly or indirectly under the cited Agreements.

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

The Government of Argentina reserves its right to raise additional factual claims and legal matters during the course of consultations. We look forward to receiving your reply to the present request and to fixing a mutually convenient date and place for consultations.