

PERU – TAX TREATMENT ON CERTAIN IMPORTED PRODUCTS

Request for the Establishment of a Panel by Chile

The following communication, dated 13 June 2002, from the Permanent Mission of Chile to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

I am writing to request the establishment of a panel, in accordance with Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), concerning the tax treatment of imports of fresh fruit, vegetables, fish, milk, tea and other natural products into Peru.

Law 27.614 amending the Single Codified Text of the Law on the General Sales Tax and Selective Consumption Tax (TUO), approved by Supreme Decree No. 055-99-EF, was published in the Official Journal of Peru, *El Peruano*, on 29 December 2001. Article 5 of the TUO used to exempt from the General Sales Tax (IGV) sales within the country and imports of a list of products – contained in Appendix I of the TUO – which included fish, milk, fruit and vegetables, tea, cereals for sowing and other products. Pursuant to Law 27.614 the TUO was amended with the result that the goods listed in the above-mentioned Appendix I will be exempted from the IGV only in the case of domestic sale. Accordingly, the importation of these goods became subject to the IGV, with the exception of a small group of products – cereals for sowing, books and some others – imports (and domestic sales) of which are still exempt from the IGV.

On 22 April 2002, pursuant to Articles XXII of the GATT 1994 (GATT 94) and 4 of the DSU, Chile requested consultations with Peru; this request was circulated in document WT/DS255/1, G/L/536. While the consultations, which were held in Lima, Peru, on 9 May, allowed the parties to gain a better understanding of their respective positions, they unfortunately did not lead to a mutually satisfactory settlement of the matter.

The Government of Chile considers that the measure in question, Law 27.614, by establishing that the exemption from IGV provided for in the Single Codified Text of the Law on the General Sales Tax and Selective Consumption Tax (TUO) (Supreme Decree No. 055-99-EF) applies only to sales within Peru and not to imports, is inconsistent with Article III of the General Agreement on Tariffs and Trade 1994. Since 29 December 2001, the importation of a large number of products is subject to the IGV (at a rate of 18 per cent), whereas the sale within Peru of the same products is exempt from the IGV. This is a violation of the national treatment commitments entered into by Peru both bilaterally and under the WTO, specifically the above-mentioned Article III of the GATT 1994. This discrimination affects Chilean exports of a number of products, in particular, but not exclusively, apples, table grapes and peaches, harming their competitiveness on the Peruvian market.

It should be borne in mind that in the request for consultations and during the consultations Chile invoked the provisions relating to cases of urgency in Article 4:8 of the DSU, and does so again in this request, as the measure affects natural, and hence perishable, products. It will therefore invoke

its rights relating to time-limits provided for in that paragraph as well as in paragraph 9 of the same Article 4.

In view of the above, the Republic of Chile requests the establishment of a panel with the standard terms of reference set out in Article 7 of the DSU. To that end, I should be grateful if this request could be included in the agenda for the forthcoming meeting of the Dispute Settlement Body on 24 June 2002.
