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CHILE – DEFINITIVE SAFEGUARD MEASURE ON IMPORTS OF FRUCTOSE

Request for Consultations by Argentina

The following communication, dated 20 December 2002, from the Permanent Mission of Argentina to the Permanent Mission of Chile and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

I have been instructed by my Government to contact you in order to request consultations with Chile pursuant to Article XXIII:1 of the GATT 1994, Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 14 of the Agreement on Safeguards, in connection with the application by the Government of Chile of a definitive safeguard measure on imports of fructose, classified under tariff heading 1702.60.90.

I. THE FACTS

On 19 November 2002, Chile enacted Decree No. 522 of the Ministry of Finance establishing a definitive safeguard measure on imports of fructose. The measure consists in an *ad valorem* tariff surcharge of 14 per cent on imports of "other fructose and fructose syrup, containing in the dry state more than 50 per cent by weight of fructose", classified under tariff heading 1702.60.90 of the Chilean Harmonized System, other than 100 per cent fructose. The measure will remain in force for a period of one year counted from 30 July 2002, i.e. the date on which a provisional safeguard measure was established in the context of the investigatory process initiated before the Chilean Commission on Distortions.

The safeguard measure was requested by the firm IANSA S.A., which holds the monopoly for refining granulated beet sugar and is Chile's main sugar importer.

II. CLAIMS

Chile has departed from the provisions of the GATT 1994 and the Agreement on Safeguards in its determination regarding the following:

(1) **Unforeseen developments**, considering that there were no unforeseen developments warranting exceptional action such as the application of a safeguard measure.

(2) **Definition of the like or directly competitive product and the domestic industry**, insofar as the product defined as a like product or direct competitor of liquid sugar, namely 55 per cent fructose and fructose syrup for industrial use, cannot compete with liquid sugar, since IANSA – improperly defined as the affected industry – produces only granulated sugar. On

account of its physical differences, the distribution systems and logistics, final uses, consumer preference and economic factors, granulated sugar cannot be defined as a like product or direct competitor of 55 per cent fructose and fructose syrup.

(3) **Increased imports**, considering that there was no finding of such an increase in imports in absolute terms and in relation to domestic production or of an increase in such conditions as to threaten to cause serious injury to the domestic industry producing like or directly competitive products.

(4) **Increase in imports in conditions such as to threaten to cause serious injury, the analysis of the factors and the clear imminence of serious injury**, because the existence of a threat of serious injury cannot be concluded from the factors analysed, since the rate and amount of the increase in imports in absolute and in relative terms did not warrant the application of a safeguard measure; the registered increase in production stemmed from record production of the input, which diminishes the importance of the increase in inventories. Similarly, the ratio of the share of imports to the alleged loss of domestic sales to the industrial sector can in no way be attributed to the increase in the imports at issue. In addition, factors such as productivity, capacity utilization, employment and profits do not support the authority's determination. Data relating to consumption shows that the latter has remained stable. Lastly, in determining the threat of injury the authority fails to demonstrate that the threat is clearly imminent; indeed its determination is merely based on conjecture and remote possibility, considering that the file of the investigation contains no prospective analysis of all the relevant factors.

(5) **Determination of causal link**, to the extent that the existence of a causal link between increased imports of 55 per cent fructose and fructose syrup and the threat of serious and imminent injury to the domestic industry has not been demonstrated on the basis of objective evidence; nor did the authority analyse factors other than the increased imports of 55 per cent fructose that had a bearing on the situation of the domestic industry.

(6) **Publication and investigation**, considering that Record No. 262 was not published and Decree No. 522 of the Ministry of Finance published in the Official Journal contains no findings or reasoned conclusions on all pertinent issues of fact and law. Moreover, the implementing authority evaluated confidential information without the applicant having justified the confidential nature of factor-related data or having furnished non-confidential summaries, although these had been requested by the authority.

(7) **Determination of the measure necessary to prevent or remedy the threat of serious injury and facilitate adjustment**, since the investigating authority did not offer any justification that the measure and its period of application, which were not even weighed by the authority, were those necessary to prevent or remedy the threat of serious injury and facilitate adjustment.

(8) **Re-introduction of the measure**, since Chile is re-introducing a safeguard measure before the minimum periods stipulated in the Agreement have elapsed.

III. LEGAL BASIS

In the light of the above considerations, Argentina considers that the aforementioned definitive safeguard measure is inconsistent *inter alia*, but not exclusively, with Chile's obligations under the following provisions of the Agreement on Safeguards and the GATT 1994:

(1) Article XIX:1(a) of the GATT 1994;
(2) Article 2.1 and Article 4.1(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994;
(3) Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994;
(4) Article 2.1, Article 4.2(a) and Article 4.1(b) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994;
(5) Article 4.2(b) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994;
(6) Article 3.1 and Article 3.2 of the Agreement on Safeguards;
(7) Article 5.1 and Article 7.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994; and
(8) Article 7.5 of the Agreement on Safeguards.

In these circumstances, Argentina requests consultations with Chile, pursuant to Article XXIII:1 of the GATT 1994, Article 4 of the DSU and the respective rules of the Agreement on Safeguards, at a mutually agreed date and place.