

**CHILE – PRICE BAND SYSTEM AND SAFEGUARD MEASURES
RELATING TO CERTAIN AGRICULTURAL PRODUCTS**

Recourse to Article 21.5 of the DSU by Argentina

Request for the Establishment of a Panel

The following communication, dated 29 December 2005, from the delegation of Argentina to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 23 October 2002, the Dispute Settlement Body (DSB) adopted the Report of the Appellate Body¹ and the report of the Panel² as modified by the Appellate Body in the dispute *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products (Chile – Price Band System)*.

The Appellate Body upheld the Panel's finding that Chile's price band system (hereinafter PBS) is a border measure that is similar to variable import levies and minimum import prices³, inconsistent with Article 4.2 of the *Agreement on Agriculture*.⁴

In accordance with these reports, the DSB requested Chile to "bring its price band system, as found ... to be inconsistent with the *Agreement on Agriculture*, into conformity with its obligations under that Agreement."

On 6 December 2002, Chile communicated a request to the DSB that the determination of a reasonable period of time for implementation of the recommendations and rulings of the DSB be the subject of binding arbitration, in accordance with Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (hereinafter the DSU).⁵

On 17 March 2003, the award of the arbitrator determined that the reasonable period of time for Chile to implement the recommendations and rulings of the DSB was 14 months from the date of the adoption of the above-mentioned reports. This reasonable period of time expired on 23 December 2003.

On 25 September 2003, Chile published in the Official Journal Law No. 19.897 establishing rules on the importation of goods into the country, amending Article 12 of Law No. 18.525 and the Customs Tariff, and on 4 October 2003 Chile published in the Official Journal Supreme

¹ WT/DS207/AB/R.

² WT/DS207/R.

³ WT/DS207/AB/R, paragraph 228(c)(i).

⁴ WT/DS207/AB/R, paragraph 288(c)(iii).

⁵ WT/DS207/9.

Decree No. 831 of the Ministry of Finance regulating the application of Article 12 of Law 18.525, as substituted by Article 1 of Law 19.897.⁶ This Decree regulates certain aspects of the PBS, the modifications of which entered into force on 16 December 2003 for the products at issue in this dispute, with the exception of edible vegetable oils, which ceased to be subject to the PBS as of the date of publication of Law No. 19.897.⁷

Argentina strongly disagreed that these changes to the PBS, as regards wheat and wheat flour, were in compliance with the recommendations and rulings of the DSB.⁸

On 24 December 2003, Argentina and Chile concluded an Understanding regarding procedures under Articles 21 and 22 of the DSU with respect to this dispute, a copy of which is attached hereto (WT/DS207/16 of 7 January 2004).

On 19 May 2005, Argentina initiated proceedings under Article 21.5 of the DSU, requesting consultations with Chile.⁹ These consultations were held in Geneva on 17 June 2004, but failed to settle the dispute. Consequently, there is disagreement, under Article 21.5 of the DSU, as to the existence or consistency with a covered agreement of the measures taken to comply with the recommendations and rulings of the DSB.

In Argentina's view, the changes to Chilean legislation on the PBS do not bring the measure into conformity and are inconsistent with the covered agreements.

Specifically, imports of wheat and wheat flour are still affected by the imposition of specific duties and rebates whose application continues to be subject to floor and ceiling parameters, as well as to the reference price mechanism and other components that do not alter the PBS in its essence.

Thus, Chile continues to maintain a measure similar to a variable import levy and a minimum import price with respect to the products at issue as referred to in the findings contained in the Appellate Body Report.¹⁰

Similarly, by maintaining the PBS unaltered in its essence and failing to exempt wheat and wheat flour from the measure, Argentina considers that Chile is imposing "other duties or charges" within the meaning of Article II of the GATT 1994 that are not recorded in the relevant column of its Schedule.

In other words, Chile has not ensured the conformity of its laws, regulations and administrative procedures with its obligations as provided in the WTO Agreements.

⁶ WT/DS207/15 of 22 September 2003, WT/DS207/15/Add.1 of 28 October 2003, and WT/DS207/15/Add.2 of 21 November 2003.

⁷ National Customs Service of the Government of Chile, Technical Undersecretariat and Department of Classification, Circular No. 292 of 14 October 2003. See also Chile's statement to the DSB of 7 November 2003 (WT/DSB/M/157, paragraph 20).

⁸ See, for example, Argentina's statements to the DSB of 2 October, 7 November and 1 December 2003 (WT/DSB/M/156 paragraphs 17-19; WT/DSB/M/157 paragraph 19; and WT/DSB/M/159 paragraph 19, respectively); 23 January, 17 February, 19 March, 20 April, 19 May and 22 June 2004 (WT/DSB/M/163 paragraph 18; WT/DSB/M/165 and WT/DSB/M/166 paragraph 18; WT/DSB/M/167 paragraph 18; WT/DSB/M/169 paragraph 20; WT/DSB/M/171 paragraph 32). The difference of opinion was also recorded in document WT/DS/207/16.

⁹ WT/DS207/17 of 25 May 2004.

¹⁰ WT/DS207/AB/R, paragraph 288(c)(i).

Consequently, Argentina considers that the measures adopted by Chile to implement the recommendations and rulings of the DSB are inconsistent, *inter alia*, with the following provisions of the covered agreements:

- Article 4.2 of the *Agreement on Agriculture*;
- the second sentence of Article II:1(b) of the GATT 1994;

and hence,

- Article XVI:4 of the *Marrakesh Agreement Establishing the World Trade Organization*.

Thus, in the light of the Understanding concluded between the two countries regarding procedures under Articles 21 and 22 of the DSU (WT/DS207/16), and in accordance with Article 21.5 of the DSU, since "there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB, Argentina requests that if possible, this matter be submitted to the original panel with the standard terms of reference provided for in Article 7 of the DSU.

Argentina requests the Panel to find that Chile has not taken measures to comply fully with the rulings and recommendations of the DSB of 23 October 2002. In particular, Argentina requests the Panel to find that Chile's PBS is inconsistent with Article 4.2 of the *Agreement on Agriculture* and the second sentence of Article II:1(b) of the GATT 1994, and hence, Article XVI:4 of the *Marrakesh Agreement Establishing the World Trade Organization*.

ANNEX

**WORLD TRADE
ORGANIZATION**

WT/DS207/16
7 January 2004

(04-0040)

Original: Spanish

**CHILE – PRICE BAND SYSTEM AND SAFEGUARD MEASURES
RELATING TO CERTAIN AGRICULTURAL PRODUCTS**

Understanding Between Argentina and Chile Regarding Procedures
Under Articles 21 and 22 of the DSU

The following communication, dated 24 December 2003, from the delegation of Argentina and the delegation of Chile to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

The Argentine Republic and the Republic of Chile would like to inform the Dispute Settlement Body that they have concluded the attached "Understanding between the Argentine Republic and the Republic of Chile Regarding Procedures Under Articles 21 and 22 of the DSU with Respect to the Dispute *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products* (WT/DS207)".

(signed)
Alicia de Hoz
Minister
Chargé d'Affaires a.i.
Permanent Mission of the Argentine Republic
to the United Nations Office at Geneva

(signed)
Alejandro Jara Puga
Ambassador
Permanent Representative of Chile
to the WTO

**Understanding Between the Argentine Republic and the Republic of Chile Regarding
Procedures Under Articles 21 and 22 of the DSU with Respect to the Dispute
*Chile – Price Band System and Safeguard Measures Relating
to Certain Agricultural Products (WTO/DS207)***

Considering that on 23 October 2002 the Dispute Settlement Body (DSB) adopted the Report of the Appellate Body¹¹ and the Report of the Panel¹² as modified by the Appellate Body in the dispute *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*;

Recalling that on 6 December 2002, Chile communicated a request to the DSB "that the determination of a reasonable period be the subject of binding arbitration, in accordance with Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes."¹³

Given that on 17 March 2003, the award of the arbitrator determined that the reasonable period of time for Chile to implement the recommendations and rulings of the DSB was 14 months from the date of adoption of the above-mentioned reports, and that this reasonable period of time expired on 23 December 2003;

Considering that Argentina and Chile disagree, within the meaning of Article 21.5 of the DSU, as to the consistency of the measures taken by Chile with the recommendations and rulings of the DSB, and that it is therefore necessary to agree on the rules of procedure applicable to Article 21.5 and 22.6 of the DSU for the exclusive purposes of the dispute referred to as WT/DS207;

The Argentine Republic and the Republic of Chile hereby agree as follows:

1. If it so deems appropriate, Argentina shall request consultations, which the parties shall agree to hold within 15 days from the date of circulation of the request. Argentina and Chile agree that at the end of such consultations, should either party so state, the parties shall jointly consider that the consultations have failed to settle the dispute.
2. Consequently, as from the date of the said statement, Argentina shall be entitled to request the establishment of a panel pursuant to Article 21.5 of the DSU.
3. At the first DSB meeting in which Argentina's request for the establishment of an Article 21.5 panel appears on the agenda, Chile shall accept the establishment of that panel.
4. Argentina and Chile shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
5. In case there is an appeal against the Article 21.5 panel report, Argentina and Chile shall cooperate to enable the Appellate Body to circulate its report within no more than 90 days from the date of notification of the appeal to the DSB.
6. With respect to the adoption of the panel and Appellate Body reports in the Article 21.5 proceedings, the time-frames of Articles 16 and 17.14 of the DSU shall apply.

¹¹ WT/DS207/AB/R.

¹² WT/DS207/R.

¹³ WT/DS207/9.

7. Argentina shall not request authorization to suspend concessions or other obligations under Article 22 of the DSU until the adoption by the DSB of the Article 21.5 reports. If on the basis of the results of these reports, Argentina should decide to initiate proceedings under Article 22 of the DSU, Chile shall not assert that Argentina is precluded from obtaining DSB authorization because its request was made outside the 30-day time-period specified in Article 22.6 of the DSU. This is without prejudice to Chile's right to have the matter referred to arbitration in accordance with Article 22.6.

8. If Argentina requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, and if Chile objects under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or makes a claim under DSU Article 22.3, the matter shall be referred to arbitration pursuant to DSU Article 22.6. Argentina shall not pose any objection to the referral of the matter to such arbitration.

9. If any of the original panellists were not available either for the Article 21.5 panel or for the Article 22.6 arbitration, or both, Argentina and Chile agree to request the Director-General of the WTO to appoint, as soon as possible, a replacement for the proceeding or proceedings in which such a replacement is required.

10. Argentina and Chile agree to continue to cooperate in all matters referred to in this Understanding and not to raise any procedural objections to any of the steps set out therein. If, during the application of these procedures, Argentina and Chile consider that a procedural aspect has not been properly addressed they shall endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps herein agreed.

Agreed in Geneva on 24 December 2003

(signed)
Alicia de Hoz
Minister
Chargé d'Affaires a.i.
Permanent Mission of the Argentine Republic
to the United Nations Office at Geneva

(signed)
Alejandro Jara Puga
Ambassador
Permanent Representative of Chile
to the WTO
