

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

Recourse to Article 21.5 of the DSU by Argentina

Request for Consultations

The following communication, dated 19 May 2004, from the delegation of Argentina to the delegation of Chile and to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On instruction from my Government, I have the pleasure to submit herewith Argentina's request for consultations with Chile pursuant to paragraph 1 of the "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)" and Article XXIII:1 of the GATT 1994.

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

WT/DS207

Request for Consultations in Connection with the Recourse by Argentina
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*. The Appellate Body found that Chile's price band system (hereinafter PBS) was inconsistent with Article 4.2 of the *Agreement on Agriculture*.

The Appellate Body further concluded as follows:

"The Appellate Body recommends that the DSB request Chile to bring its price band system, as found, in this Report and in the Panel Report as modified by this Report, 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 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).³

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 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 19.897.⁴ 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. 19.897.⁵

¹ WT/DS207/AB/R.

² WT/DS207/R.

³ WT/DS207/9.

⁴ 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.

⁵ 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).

Argentina strongly disagreed that these changes to the PBS, as regards wheat and wheat flour, were in compliance with the recommendations of the Panel and the Appellate Body.⁶

On 24 December 2003, Argentina and Chile concluded an "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).⁷

In the light of this Agreement and of Article XXIII:1 of the GATT 1994, and without prejudice to its other rights under the WTO, Argentina hereby requests consultations with Chile.

Specifically, Argentina considers that, through Law No. 19.897 and Supreme Decree No. 831 of 2003, Chile modified the PBS in such a way that imports of the products at issue in this dispute 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.

Thus, it would appear that Chile has maintained a measure similar to a variable import levy and a minimum import price with respect to the products at issue in this dispute. At the same time, Chile imposes "other duties or charges" on imports of the said products that are not recorded in the relevant column of its Schedule. Finally, it grants treatment less favourable than that accorded to the same products of Chilean origin. 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.

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;
- paragraph 4 of Article III of the GATT 1994,

and hence,

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

Since the Understanding regarding procedures under Articles 21 and 22 of the DSU with respect to this dispute stipulates that "Argentina shall request consultations, which the parties shall agree to hold within 15 days from the date of circulation of the request"⁸, Argentina looks forward to receiving Chile's reply to this request at an early date in order to fix a mutually acceptable date and venue for the consultations.

⁶ See, for example, Argentina's statements at the DSB meetings of 2 October 2003 (WT/DSB/M/156, paragraphs 17-19), 7 November 2003 (WT/DSB/M/157, paragraph 19), and 1 December 2003 (WT/DSB/M/159, paragraph 19). This difference of opinion was also recorded in document WT/DS207/16.

⁷ WT/DS207/16 of 7 January 2004.

⁸ WT/DS207/16, paragraph 1.