

**CHILE – PROVISIONAL SAFEGUARD MEASURE  
ON CERTAIN MILK PRODUCTS/  
CHILE – DEFINITIVE SAFEGUARD MEASURE  
ON CERTAIN MILK PRODUCTS**

Request for the Establishment of a Panel by Argentina

The following communication, dated 8 March 2007, from the delegation of Argentina to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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I have been instructed by the Government of the Argentine Republic to contact you in order to request the establishment of a panel pursuant to Article XXIII of the *General Agreement on Tariffs and Trade 1994 (GATT 1994)*, Articles 4 and 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*, and Article 14 of the *Agreement on Safeguards (AS)*, in connection with the imposition by the Government of Chile of provisional and definitive safeguard measures on certain milk products from Argentina.

In this connection, Exempt Decree No. 728, published in the Official Journal of the Republic of Chile on 13 October 2006, provides for the imposition of a provisional safeguard on certain milk products from Argentina in accordance with the recommendation contained in the Minutes of Meeting No. 282 of the "National Commission responsible for investigating distortions in the price of imported goods" (hereinafter the Commission on Distortions). Subsequently, likewise pursuant to the recommendation of the Commission, as contained in the Minutes of Meeting No. 285, Exempt Decree No. 987, published in the Official Journal of the Republic of Chile of 14 December 2006, ordered the imposition of a definitive safeguard on the same products. It should be noted that these measures were adopted in the course of an investigation procedure initiated by resolution of the Commission on Distortions, as is clear from the Minutes of Meeting No. 279 published on 11 September 2006.

On 25 October 2006, Argentina requested consultations with Chile concerning the initiation of the safeguard investigation and the subsequent imposition of a provisional safeguard. The consultation meeting was held on 23 November 2006 in Santiago, Chile.<sup>1</sup> Subsequently, in the light of the imposition of a definitive safeguard, Argentina requested further consultations with Chile on 28 December 2006, and these were held on 2 February 2007.<sup>2</sup> Thus, in both cases, an attempt was made to reach a mutually satisfactory settlement, but this attempt unfortunately failed to produce any results.

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<sup>1</sup> The above-mentioned request was circulated on 30 October 2006 to the rest of the WTO Members in document WT/DS351/1.

<sup>2</sup> The above-mentioned request was circulated on 9 January 2007 to the rest of the WTO Members in document WT/DS356/1.

As the measures concerned were adopted at different times, they were the subject of successive individual consultations. Nevertheless Argentina considers that, as these measures were ordered in the course of the same investigation procedure, their integrated and combined treatment by the same Panel under a unified procedure for the settlement of both disputes would be more conducive to a comprehensive settlement of the claims put forward by Argentina.

### **Background and identification of the measures at issue**

On 1 September 2006, according to the Minutes of Meeting No. 279 of the Commission on Distortions, it was decided to initiate a safeguard investigation on imports of powdered milk, classified under tariff subheadings 0402.1000, 0402.2111, 0402.2112, 0402.2113, 0402.2114, 0402.2115, 0402.2116, 0402.2117, 0402.2118, 0402.2911, 0402.2912, 0402.2913, 0402.2914, 0402.2915, 0402.2916, 0402.2917 and 0402.2918; liquid milk, classified under tariff subheadings 0401.1000, 0401.2000, 0401.3010, 0401.3020, 0401.3030, 0401.3040, 0401.3090 and 0402.9110; and Gouda cheese, classified under tariff subheading 0406.9010 of the Chilean Harmonized Tariff, as requested by the National Federation of Milk Producers, FEDELECHE. The investigation began on 11 September 2006, the date of publication in the Official Journal of Chile.

Subsequently, at the meeting of 6 October 2006 of the Commission on Distortions (Minutes of Meeting No. 282), it was decided to recommend the imposition of a provisional tariff surcharge of 23 per cent on imports from Argentina of powdered milk, classified under tariff subheadings 0402.1000, 0402.2111, 0402.2112, 0402.2113, 0402.2114, 0402.2115, 0402.2116, 0402.2117, 0402.2118, 0402.2911, 0402.2912, 0402.2913, 0402.2914, 0402.2915, 0402.2916, 0402.2917 and 0402.2918, with the exception of powdered cream under those subheadings; liquid milk, classified under tariff subheadings 0401.1000, 0401.2000, 0401.3010, 0401.3020, 0401.3030, 0401.3040, 0401.3090 and 0402.9110, with the exception of liquid cream and evaporated milk under those subheadings; and Gouda cheese, classified under tariff subheading 0406.9010. In accordance with the terms of the recommendations by the Commission on Distortions, the Ministry of Finance, by order of the President of the Republic, issued Exempt Decree No. 728 of 12 October 2006 ordering the establishment of a provisional safeguard measure with a maximum period of application of 200 days. This measure was published in the Official Journal of Friday, 13 October 2006.

At its meeting on 5 December 2006 (Minutes of Meeting No. 285), the Commission on Distortions terminated the investigation and recommended the imposition of a definitive safeguard in the form of a tariff surcharge of 23 per cent on imports from Argentina of powdered milk, liquid milk and Gouda cheese, which at the time were subject to the provisional safeguard. Pursuant to that recommendation, on 12 December 2006 the Ministry of Finance, by order of the President of the Republic, issued Exempt Decree No. 987 imposing a safeguard for a period of one year from 13 October 2006. The Decree was published in the Official Journal of Thursday, 14 December 2006.

Consequently, the measures at issue include the Minutes of Meeting No. 279 of the Commission on Distortions, at which initiation of the investigation was ordered; Exempt Decree No. 728, which provides for the imposition of the provisional safeguard; Exempt Decree No. 987, ordering the imposition of the definitive safeguard, and the extensions and any related amendments thereto; and the proceedings which resulted in the imposition of these measures.

**Legal basis of the claim**

The Government of the Argentine Republic considers that these measures violate Chile's obligations under the relevant provisions of the GATT 1994 and the Agreement on Safeguards, particularly, but not exclusively with regard to:

1. Articles I:1 and XIX:1 of the GATT 1994 and Article 2.2 of the Agreement on Safeguards, inasmuch as both the provisional safeguard measure and the definitive safeguard measure discriminate between products from Argentina and products from other WTO country Members, by virtue of being imposed solely on imports from Argentina. In addition, the investigation procedure of the Chilean implementing authority was also conducted in a discriminatory manner, inasmuch as imports from other sources were not taken into account.
2. Articles 2.1 and 4.2(a) and (b) of the Agreement on Safeguards, in conjunction with Article 4.1(c) of the Agreement on Safeguards and Article XIX:1 of the GATT 1994, inasmuch as the initiation of the investigation, the determinations and the resulting measures were not based on an adequate definition of like or directly competitive products or of the domestic industry for like products or products directly competing with allegedly increased imports.
3. Articles 3.1 and 4.2(c) of the Agreement on Safeguards and Article XIX of the GATT 1994, inasmuch as the competent authorities have not set forth or included in their reports (Minutes of the Commission) or in any part of the record of investigation proceedings the findings and reasoned conclusions on all pertinent issues of fact and law, as required by the Agreement on Safeguards and Article XIX of the GATT 1994, including justification of the measures imposed in relation to both the provisional safeguard and the definitive safeguard. Nor have they included a detailed analysis of the case under investigation, or demonstrated the relevance of the factors examined.
4. Article XIX:1 of the GATT 1994, since the competent authorities of Chile have not demonstrated the occurrence of unforeseen developments warranting exceptional action such as the imposition of a safeguard. Nor have they established that the alleged increase in imports and the conditions of their importation were the result of unforeseen developments and the effect of obligations assumed under the GATT 1994.
5. Article XIX:1 of the GATT 1994 and Articles 2.1 and 4.2(a) and (b) of the Agreement on Safeguards, inasmuch as it was not properly established that imports were entering "in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products".
6. Articles 2.1, 4.1(a) and (b) and 4.2(a) and (b) of the Agreement on Safeguards and Article XIX of the GATT 1994, inasmuch as there was not shown to be a significant overall impairment in the position of the domestic industry or any clearly imminent serious injury. Moreover, the implementing Chilean authority failed to carry out an evaluation of all relevant factors to determine serious injury or the threat thereof.
7. Articles 2.1 and 4.2(b) of the Agreement on Safeguards, inasmuch as it has not been demonstrated, on the basis of objective evidence, that there exists a causal link between the alleged increase in imports of the products concerned and the alleged serious injury or threat of serious and imminent injury to the domestic industry which the competent authority believes to have been established, nor was an analysis made to ensure that the injury caused by other factors was not being attributed to Argentine imports.

8. Articles 5.1 and 7.1 of the Agreement on Safeguards, inasmuch as there is no record in the investigation of an analysis of whether the measures imposed were necessary to prevent or remedy serious injury and to facilitate adjustment. Nor is there any record that an adjustment plan was proposed.

9. Article 6 of the Agreement on Safeguards and Article XIX:2 of the GATT 1994, inasmuch as the Chilean authorities imposed a provisional safeguard without having demonstrated the existence of "critical circumstances, where delay would cause damage which it would be difficult to repair". Nor did they make a "preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury" to the domestic industry producing like or directly competitive products.

10. Articles 12.4 and 12.2 of the Agreement on Safeguards, since Chile failed to provide prior notification to the Committee on Safeguards when it ordered the imposition of the provisional safeguard and failed to provide all relevant information in notifying both safeguard measures, and moreover included erroneous data concerning their duration.

For the above reasons, the Argentine Republic requests the establishment of a panel with standard terms of reference under Article 7.1 of the DSU in order to examine the claims made and to find that the measures imposed by the Republic of Chile, together with the amendments and extensions thereto and any related amendments, are inconsistent with its obligations under the above-mentioned agreements, and nullify or impair benefits accruing directly to Argentina under the Agreements of the World Trade Organization.

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