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CHILE – PROVISIONAL SAFEGUARD MEASURE ON MIXTURES OF EDIBLE OILS

Request for Consultations by Argentina

The following communication, dated 19 February 2001, 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 General Agreement on Tariffs and Trade 1994 (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 (AS) in connection with the imposition by the Chilean authorities of a provisional safeguard measure on imports of mixtures of edible oils.

On 11 January 2001, by Decree No. 3 of the Ministry of Finance, Chile adopted a provisional safeguard measure on imports of mixtures of edible oils, consisting of an *ad valorem* tariff surcharge of 48 per cent on imports of mixtures of oils classified under tariff heading 1517.9000 of the Chilean Harmonized Tariff.

Document G/SG/N/6/CHL/5, containing Chile's notification of the initiation of the safeguard investigation, was circulated on 19 January 2001. The notification of the recommendation by the Chilean investigating authority to apply a provisional safeguard measure was circulated in the WTO as document G/SG/N/7/CHL/5, dated 15 January 2001. The notification of the provisional measure adopted was circulated in the WTO as document G/SG/N/7/5/Suppl.1 on 19 January 2001.

In the first place, Argentina regrets that Chile did not comply with its obligation to hold prior consultations under AS Article 12, paragraph 4, immediately after the measure was taken.

Secondly, with the scant evidence available, it may be seen that the above-mentioned notifications do not contain a precise definition either of the like or directly competitive product or of the criteria used to determine it: reference is only made to the product that is the subject of the measure.

Furthermore, there is no clear definition of the domestic industry affected which produces the like or directly competitive product that is the subject of the provisional measure. Nor is it clear from the document which investigating period was used to determine the behaviour of imports in conditions such as to permit application of a measure in conformity with the AS.

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With regard to the factors of injury or threat of injury that have to be analysed in accordance with the AS, from an initial evaluation it is not possible to distinguish which industry is the subject of this analysis: it appears that in some cases the information does not pertain to the same domestic industry, which would not be consistent with the provisions of the Agreement concerning the determination of serious injury or threat of serious injury. Likewise, and without prejudice to this, in these determinations the implementing authority appears to have omitted the analysis of some of the factors mentioned in the AS without providing any reason for so doing.

With reference to the determination of threat of injury, document G/SG/N/7/CHL/5 states that: "It is estimated that if this situation were to continue, imports of mixtures of oils would bring the price payable to farmers down to US$154/ton. This scenario would lead to wholesale bankruptcy of producers of rapeseed and closure of the sole extracting plant currently operating in the country, with the ensuing disappearance of the crop from Chile. This would result in the following economic injury for the domestic extracting industry …". This determination of threat of injury is not consistent with the definition of the domestic industry indicated in the notification of initiation of the investigation (document G/SG/N/6/CHL/5).

Again, the preliminary determination notified does not reveal the existence of clear evidence of the causal link between the increased imports and the threat of serious injury to the domestic industry.

Furthermore, the Chilean investigating authority likewise appears not to have evaluated "factors other than increased imports [which] are causing injury to the domestic industry at the same time …" (AS Article 4.2(b)).

Lastly, the notification in question does not specify the reasons why any delay could cause irreparable damage to the domestic industry such that "critical circumstances" could be considered to exist. The notification confines itself to making a cross-reference to threat of injury, a situation constituting a different determination based on another provision of the AS. Likewise, there is no analysis of the existence of unforeseen developments (Article XIX of the GATT 1994).

In the light of the above considerations, Argentina considers that the provisional safeguard measure imposed on imports of mixtures of vegetable oils to be incompatible with Chile's obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards, in particular, but not exclusively, Articles 2, 4, 6 and 12 of that Agreement.

We await your reply to this request and the setting of a mutually convenient date for holding the consultations.

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