

**ARGENTINA – DEFINITIVE ANTI-DUMPING DUTIES
ON POULTRY FROM BRAZIL**

Request for the Establishment of a Panel by Brazil

The following communication, dated 25 February 2002, from the Permanent Mission of Brazil to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 7 November 2001, Brazil requested consultations with Argentina pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 17 of the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement) and Article 19 of the Agreement on Implementation of Article VII of GATT 1994 (Agreement on Customs Valuation) concerning the definitive anti-dumping measures on imports of poultry from Brazil, imposed by Argentina in Resolution No. 574 of 21 July 2000, and published in the Official Gazette on 24 July 2000.

That request was circulated to the WTO Members on 12 November 2001 as document WT/DS241/1, "Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil". Consultations were held in Geneva on 10 December 2001. Even though consultations have allowed a better understanding of the issue, they have not led to a mutually agreed solution. Pursuant to Article XXII of the GATT 1994, Article 6 of the DSU and Article 17 of the Anti-Dumping Agreement, Brazil hereby respectfully requests that a panel be established at the next meeting of the DSB.

Brazil requests that the panel consider and find that the above-mentioned measures are inconsistent with several provisions of the Anti-Dumping Agreement and, as a result, nullify and impair the benefits accruing to Brazil under that Agreement. Specifically, Brazil's claims of violation of the Anti-Dumping Agreement incurred by Argentina may be summarized as follows:

- A. The application submitted by Central de Empresas Procesadoras Avícolas (CEPA) and the subsequent initiation of the investigation by the Argentine authorities did not comply with the requirements set forth in **Article 5** of the Anti-Dumping Agreement.
 1. The application submitted by CEPA did not include sufficient evidence of dumping, threat of injury and causal link between the two, in accordance with **Articles 2 and 3** of the Anti-Dumping Agreement. The Argentine investigating authorities, the Dirección de Competencia Desleal (DCD) and the Comisión Nacional de Comercio Exterior (CNCE), failed to examine the accuracy and adequacy of the evidence provided in the application and to reject the application, in view of the lack of

sufficient evidence of dumping and injury needed to justify the initiation of an application, thereby violating **Articles 5.2, 5.3 and 5.8**.

2. The Argentine authorities failed to simultaneously consider the evidence of both dumping and threat of injury in deciding whether or not to initiate the investigation, thereby violating **Article 5.7**.
 3. The Argentine authorities failed to reject the application submitted by CEPA and promptly terminate the investigation, as soon as the CNCE determined that there was insufficient evidence of injury or threat of injury to justify the initiation of the investigation, thereby violating **Article 5.8**.
- B. Once the investigation was initiated, the Argentine authorities did not comply with the public notice and evidentiary requirements set forth in **Articles 12, 6** and **Annex II** of the Anti-Dumping Agreement.
1. The Argentine authorities failed to notify seven Brazilian exporters, interested parties in the investigation, when it was satisfied that there was sufficient evidence to justify the initiation of the investigation, thereby violating **Article 12.1**.
 2. The CNCE acted inconsistently with **Article 12.2.2**, *inter alia*, by failing to explain in the final injury determination why it examined the relevant economic factors listed in Article 3.4 based on different periods, and by failing to evaluate and consider in the final injury determination all the relevant economic factors and indices listed in Article 3.4.
 3. The Argentine authorities failed to provide in the determination to impose definitive anti-dumping duties how the "minimum export price" was established, thereby violating **Article 12.2.2**.
 4. The DCD failed to give the legally required time for some of the exporters to respond to the questionnaires. The DCD also failed to promptly make available to these Brazilian exporters, evidence presented in writing by other interested parties. By not giving these exporters sufficient time to respond to the questionnaires and by not promptly making available the evidence presented by other interested parties, the DCD did not give these exporters full opportunity to defend their interests in this investigation, thereby violating **Articles 6.1.1, 6.1.2 and 6.2**.
 5. The Argentine authorities failed to provide the text of the written application to the Brazilian exporters and to the Government of Brazil as soon as the investigation was initiated, thereby violating **Article 6.1.3**.
 6. The DCD disregarded the responses submitted by Brazilian exporters on normal value and export price, and used instead normal value and export price data presented by petitioner and the Argentine agency the Dirección de Ganadería, Secretaría de Agricultura, Ganadería y Pesca (Ganadería). The DCD's application of adverse facts available was inconsistent with **Article 6.8** and **Annex II**, in particular, paragraphs 3, 5, 6 and 7.
 7. The DCD did not explain in the final determination why the data on normal value and export price submitted by Brazilian exporters was not accepted, and why it chose to use instead normal value and export price information provided by petitioner and the

Ganaderia. By not accepting that information without offering any valid justification in the public notice of conclusion, the DCD acted inconsistently with **Article 12.2.2**

8. The DCD failed to inform the Brazilian exporters of the essential facts under consideration which formed the basis for the decision whether to apply definitive measures, thereby preventing the Brazilian exporters from adequately defending their interests, contrary to the requirement set out in **Article 6.9**.
 9. The DCD failed to calculate an individual margin of dumping for two Brazilian exporters even though these two companies provided normal value and export price data, thereby violating **Article 6.10**.
- C. Many actions taken by the Argentine authorities throughout the investigation, as well as the final affirmative determination on dumping, injury and causal relationship did not comply with the requirements set forth in **Articles 2, 3 and 4** of the Anti-Dumping Agreement.
1. The DCD acted inconsistently with **Article 2.4** when it failed to make a fair comparison between export price and normal value in a number of ways, such as : by failing to make due allowance for differences in freight when it established the normal value for two Brazilian exporters; by failing to make due allowance for differences in taxation, freight and financial cost, when it established normal value for all other exporters; by incorrectly making due allowances for alleged physical characteristic differences in the product sold to Brazil and to Argentina; and, by imposing an unreasonable burden of proof on Brazilian exporters by requesting that they provide normal value and export price data for years outside the dumping period of investigation.
 2. The DCD failed to make the correct fair comparison between export price and normal value, when it established the dumping margin for two Brazilian exporters, thereby violating **Article 2.4.2**.
 3. The CNCE used different periods for evaluating the relevant economic factors and indices set forth in Article 3.4 of the Anti-Dumping Agreement. By using different periods in the injury analysis, the CNCE failed to make an injury determination based on positive evidence and involving an objective examination, thereby violating **Article 3.1**.
 4. In the final injury determination, the CNCE did not exclude imports of two Brazilian exporters, whose imports were not considered as "dumped imports". By not excluding these imports from the volume of the "dumped imports", the CNCE failed to properly consider the volume of the "dumped imports", the effect of the "dumped imports" on prices in the domestic market, and the impact of the "dumped imports" on domestic producers, thereby violating **Articles 3.1, 3.2 and 3.4**.
 5. The Subsecretaria de Industria, Comercio y Minería (SICM) did not properly demonstrate the causal link between the "dumped imports" and the injury to the domestic industry, thereby violating **Article 3.5**. For instance, by not excluding the two Brazilian exporters, whose imports were not considered as "dumped imports", the injury and the causal link analyses were flawed.
 6. The CNCE failed to evaluate all the relevant economic factors and indices listed in Article 3.4 in the examination of the impact of the dumped imports on the domestic industry, thereby violating **Articles 3.1 and 3.4**.

7. In the final injury determination, the CNCE incorrectly considered that 46.2 per cent of the total domestic production of poultry in Argentina was sufficient to constitute the major proportion of the total domestic production needed to define the domestic industry, thereby violating **Article 4.1**.
- D. The Argentine authorities imposed and collected anti-dumping duties, as a result of the investigation, that did not comply with the requirements set forth in **Article 9** of the Anti-Dumping Agreement.
1. The Argentine authorities imposed anti-dumping duties to be collected as the absolute difference between the FOB price invoiced in any one shipment and the designated "minimum export price" fixed in FOB terms. Brazil submits that the variable anti-dumping duty established in the final determination violates **Articles 9.2** and **9.3**.

In view of the claims set forth above, Brazil considers that Argentina has acted inconsistently with Article VI of the GATT 1994 and Article 1 of the Anti-Dumping Agreement, which only permit anti-dumping measures to be applied under the circumstances provided for in Article VI and pursuant to investigations initiated and conducted in accordance with the Anti-Dumping Agreement. Because the claims set forth under letters A through D of this request indicate the violation of various provisions under the Anti-Dumping Agreement, Article VI of the GATT 1994 and Article 1 of the Anti-Dumping Agreement are consequently violated.

Brazil requests that the panel be established with the standard terms of reference as provided for in Article 7 of the DSU. To this effect, Brazil also requests the inclusion of the corresponding item on the agenda of the next meeting of the Dispute Settlement Body, scheduled for 8 March 2002.
