

**UNITED STATES – CONTINUED DUMPING AND
SUBSIDY OFFSET ACT OF 2000**

Recourse by Chile to Article 22.2 of the DSU

The following communication, dated 15 January 2004, from the delegation of Chile to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

In accordance with Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Chile hereby requests authorization from the Dispute Settlement Body (DSB) to suspend the application to the United States of concessions or other obligations in view of the United States' refusal to bring into conformity with the WTO agreements the measure found to be inconsistent in the dispute *United States – Continued Dumping and Subsidy Offset Act of 2000*.

Indeed, on 27 January 2003, the Dispute Settlement Body adopted the report of the Appellate Body and the report of the Panel, as modified by the Appellate Body, in the said dispute. These reports concluded, *inter alia*, that:

- The CDSOA is a non-permissible specific action against dumping or a subsidy contrary to Article 18.1 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-Dumping Agreement) and Article 32.1 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement);
- the CDSOA is inconsistent with certain provisions of the Anti-Dumping Agreement and the SCM Agreement, and consequently, the United States failed to comply with Article 18.4 of the Anti-Dumping Agreement, Article 32.5 of the SCM Agreement and Article XVI:4 of the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement).

Since the CDSOA is inconsistent with provisions of the Anti-Dumping Agreement and the SCM Agreement, it nullifies or impairs benefits accruing to the Complaining Parties under those agreements.

An arbitration under Article 21.3(c) of the DSU determined that the reasonable period of time for the United States to implement the DSB recommendations and rulings in this dispute would expire on 27 December 2003. Although it expressed its intention to comply with these recommendations and rulings, the United States has not brought the CDSOA into conformity with the covered Agreements, nor has it complied in any other way with the recommendations or rulings within the determined reasonable period of time. The status report submitted by the United States and circulated as document WT/DS217/16 and WT/DS234/24 in fact points to the same conclusion.

In view of these considerations, and pursuant to the above-mentioned Article 22.2 of the DSU, Chile requests the DSB for authorization to suspend the application to the United States of concessions or other obligations under the covered Agreements by an amount to be determined each year according to the offset payments made to the affected United States producers, in the most recent annual distribution of anti-dumping or countervailing duties collected and assessed on products from Chile under the CDSOA. This will be done by applying, on an annual basis, an additional tariff on products from the United States. Thus, each year, as soon as the amount of the offset payments made is known, Chile will notify the products subject to the additional tariff and the rate of the additional tariff.

I would be grateful if you could include this request as an agenda item at the next DSB meeting on 26 January 2004.
