

**EUROPEAN COMMUNITIES – DEFINITIVE SAFEGUARD MEASURE  
ON SALMON**

Request for Consultations by Chile

The following communication, dated 8 February 2005, from the delegation of Chile to the delegation of the European Communities and to the Chairperson 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 the European Communities pursuant to Article XXII:1 of the 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. This request is related to the definitive safeguard measure applied by the European Communities to imports of farmed salmon, whether or not filleted, fresh, chilled or frozen (CN ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 222 00, ex 0304 10 13 and ex 0304 20 13).

On 5 February 2005, Commission Regulation (EC) No. 206/2005 of 4 February 2005 imposing a definitive safeguard measure against imports of farmed salmon was published in the *Official Journal of the European Union*. The regulation took effect on 6 February 2005 and will remain in force until 13 August 2008. The measure consists of (a) a system of tariff quotas established on the basis of traditional volumes of exports to the EU, beyond which an additional duty, specified in the regulation, will be applied to the products in question; (b) a minimum import price, which applies to imports both within and beyond the tariff quota; and (c) a deposit payable by importers as a security for payment of the actual import price.

On 10 January 2005, the European Communities notified to the WTO a finding of serious injury and a decision to apply a definitive safeguard measure (G/SG/N/8/EEC/3, G/SG/N/10/EEC/3 and G/SG/N/11/EEC/3/Suppl.1). Pursuant to Article 12.3 of the Agreement on Safeguards, Chile requested consultations, which were held in Brussels on 20 January last.

Chile considers this definitive safeguard measure to be inconsistent with the WTO rules for the reasons set out below, among others. The measure is having serious adverse effects on Chile's exports of the product in question to the European market.

- The product to which the measure applies and the like and directly competitive products were not correctly defined, frozen farmed salmon being a different product from the fresh salmon produced by the EC industry.

- There were no "unforeseen developments" as a result of which imports increased, as required by Article XIX of the GATT 1994.
- There was no increase in imports that was sufficiently recent, sudden, sharp and significant, as required by Article XIX of the GATT 1994 and Article 2.1 of the Agreement on Safeguards, and that occurred under such conditions as to cause or threaten to cause serious injury to the domestic industry. Nor was there an increase in imports relative to domestic production.
- There is no serious injury or threat of injury to the domestic industry and the determination of injury carried out by the investigation authority was based on allegations by the domestic industry and on conjecture and remote possibility. The investigating authority did not evaluate or consider all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry. In fact, the factors evaluated do not show injury to the industry. Furthermore, it is not clear that the injury analysis covered the whole industry, since the authority acknowledges that some factors were analysed with respect only to the cooperating companies. What is more, the indicators that did cover the whole industry show that the industry has not suffered injury. Under "other factors", in which the cooperating companies were included, the financial data relate to the companies' production as a whole and not to salmon production specifically. Indeed, the Commission's report recommending the measure notes that this information is "less meaningful". The foregoing is inconsistent with Article 4.2(a) of the Agreement on Safeguards.
- In the absence of injury or threat of injury attributable to the increase in imports, the safeguard measure is inconsistent with Article 4.2(b) of the Agreement on Safeguards. And in any event, any injury or threat of injury is due to other factors, which the investigation authority did not analyse (such as the absence of economies of scale among the Scottish and Irish producers and exchange rate fluctuations). Instead, it attributed the injury to the increase in imports.
- Lastly, the safeguard measure on imports of salmon is applied beyond the extent necessary to prevent or remedy serious injury and to facilitate adjustment, in breach of Article 5 of the Agreement on Safeguards.

In the light of the above considerations, Chile considers the definitive safeguard measure imposed on imports of farmed salmon, whether or not filleted, fresh, chilled or frozen to be inconsistent with various WTO provisions, including Articles 2, 4 and 5 of the Agreement on Safeguards and Article XIX:1 of the GATT 1994.

I await your reply to this request for consultations in order to establish a mutually convenient date for holding them.

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