

**CHILE – DEFINITIVE SAFEGUARD MEASURES
ON CERTAIN MILK PRODUCTS**

Request for Consultations by Argentina

The following communication, dated 28 December 2006, from the delegation of Argentina to the delegation 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 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII:1 of the 1994 General Agreement on Tariffs and Trade (GATT 1994) and Article 14 of the Agreement on Safeguards, in connection with the imposition by the Government of Chile of a definitive safeguard measure on imports of certain milk products.¹

In September 2006 the Government of Chile decided, by Record No. 279 of the National Commission Responsible for Investigating Distortions (hereinafter Record of the Commission), to initiate a safeguards investigation into imports of powdered milk classified under tariff headings: 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 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 *Diario Oficial de Chile* (Official Journal).

Thereafter, on 6 October at its meeting No. 282, the Commission decided to recommend applying a provisional tariff surcharge of 23 per cent to imports of powdered milk, liquid milk and gouda cheese from Argentina. The recommendation was set forth in Exempt Decree No. 728, published in the *Diario Oficial* of Friday 13 October 2006.²

The safeguards investigation led the competent authorities – acting pursuant to the Commission's recommendation in Record No. 285 of 5 December 2006 – to issue Exempt Decree No. 987, published in the *Diario Oficial* of Thursday 14 December, establishing the application of a

¹ The initiation of the investigation process was notified to the Committee on Safeguards by document G/SG/N/6/CHL/11, the provisional measure by document G/SG/N/7/CHL/8, and the definitive measure by documents G/SG/N/8/CHL/4 and G/SG/N/10/CHL/7, circulated to Members of the WTO on 22 December 2006.

² Exempt Decree No. 278, published in the *Diario Oficial* of 13 October 2006 and covered by the consultation requested in document WT/DS351/1.

definitive safeguard of 23 per cent to 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 the 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.

The Argentine Government considers the definitive safeguard measure imposed on the above-mentioned milk products from Argentina to be inconsistent with Chile's obligations under the relevant provisions of the GATT 1994 and the Agreement on Safeguards.

The Argentine Government is thus of the view that in its determination, Chile has departed from the provisions of the GATT 1994 and the Agreement on Safeguards, particularly in respect of the following:

- **Non-discriminatory application:** insofar as the measures are imposed solely on imports from Argentina, which constitutes a flagrant violation of the basic principles of the multilateral trading system. Moreover, the failure to conduct an investigation of the relationship between imports from other sources and the impact of those imports on the situation of the domestic industry also serves to demonstrate the discriminatory nature of the measure.
- **Investigation procedure:** taking into account that neither the Commission Record recommending application of a definitive measure nor any other text that the Commission has provided to date properly develops the fundamental points relating to all pertinent issues of fact and of law.
- **Unforeseen developments:** since the elements of the Argentine Government's economic policy relied on in Commission Record 285 are no more than a bald reference and cannot, as Chile make out, be regarded as an unforeseen circumstance.
- **Definition of the like or directly competitive product and the domestic industry:** insofar as neither the application nor the Record of the Commission or the Decree contain arguments from which it may be concluded that the products are alike or directly competitive between themselves and in relation to the imported products. Moreover, the Argentine Government considers that FEDELECHE does not at all account for a "major proportion" of the total domestic production of the like products or those directly competitive with the imported products under investigation.
- **Increased imports:** considering that there was no finding of an increase in imports in absolute terms and relative to domestic production or of an increase under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products.
- **Evaluation of all relevant factors to determine whether the increase in imports has caused or threatens to cause serious injury:** analysis of the factors and clear imminence of serious injury: because the existence of injury or threat of serious injury cannot be concluded from the factors analysed. In addition, factors such as productivity, capacity utilization, employment and profits have not been properly

evaluated and only a few brief references have been made. Similarly, data relating to prices and milk deliveries to plants show positive signs.

- **Determination of serious injury or threat of serious injury:** insofar as Chile has not demonstrated a significant overall impairment in the position of the domestic industry or any clearly imminent serious injury.
- **Determination of causal link:** insofar as it has not been demonstrated, on the basis of objective evidence, that there exists a causal link between the increased imports of the products concerned and the serious injury to the domestic industry that the competent authority believes has been shown, as there are several important factors unrelated to the imports from Argentina – such as the exchange rate – which have not been properly analysed.
- **Need for the measure in order to prevent or remedy serious injury and to facilitate adjustment:** insofar as serious injury or threat thereof to the domestic industry in question has not been demonstrated, and the measure is not needed to remedy some assumed injury or threat. The remedy afforded by the measure thus exceeds the period needed to prevent or remedy the alleged serious injury and to facilitate adjustment.

In the light of the foregoing, Argentina considers that the above-mentioned provisional safeguard measure is inconsistent, *inter alia*, but not exclusively, with Chile's obligations under the following provisions:

- GATT 1994:
 - (1) Article XIX
 - (2) Article I
 - (3) Article XVI:4 of the Agreement Establishing the World Trade Organization (WTO Agreement)
- Agreement on Safeguards:
 - (4) Article 2
 - (5) Article 3.1
 - (6) Article 4
 - (7) Article 5.1
 - (8) Article 7.1
 - (9) Article 12.2

Furthermore, the measures adopted by Chile also appear to nullify or impair the benefits accruing to Argentina directly or indirectly under the cited Agreements.

Argentina reserves its rights regarding pursuit of the remedies provided for in the Agreement on Safeguards and the DSU and also reserves its rights to raise additional factual matters and legal claims during the course of the consultations.

In these circumstances, Argentina requests consultations with Chile, pursuant to Article XXIII:1 of the GATT 1994, Article 4 of the DSU and the relevant rules of the Agreement on Safeguards, and proposes that they be held as early as possible at a mutually agreed date and place.
