

CHILE – SAFEGUARD MEASURES ON SUGAR

Request for Consultations by Colombia

The following communication, dated 15 March 2001, from the Permanent Mission of Colombia 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.

On the instructions of my Government I hereby request consultations with the Government of Chile under 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), and Article 14 of the Agreement on Safeguards.

In a communication dated 27 February 1995, the Government of Chile informed the Secretariat of the WTO that Chile had no legislation in force for the application of safeguards. This communication was notified to Members by the Secretariat in document G/SG/N/1/CHL/1, dated 26 April 1995.

In notification G/SG/N/1/CHL/2, dated 24 August, the Government of Chile submitted the new legislation it had adopted concerning the investigation and imposition of safeguard measures.

In document G/SG/N/8/CHL/1, dated 7 February 2000, the Government of Chile notified the WTO of its finding of serious injury and its decision to apply a definitive safeguard measure on imports of products of the following tariff headings: wheat 10.01.90.00; wheat flour 11.01.00.00; sugar 17.01.11.00, 17.01.12.00, 17.01.91.00, 17.01.99.00; and edible vegetable oils 15.07.10.00, 15.07.90.00, 15.08.10.00, 15.08.90.00, 15.09.10.00, 15.09.90.00, 15.10.00.00, 15.11.10.00, 15.11.90.00, 15.12.11.10, 15.12.11.20, 15.12.19.10, 15.12.19.20, 15.12.21.00, 15.12.29.00, 15.13.11.00, 15.13.19.00, 15.13.21.00, 15.13.29.00, 15.14.10.00, 15.14.90.00, 15.15.21.00, 15.15.29.00, 15.15.50.00 and 15.15.90.00.

Pursuant to Decree No. 9 ("exempt procedure") of the Ministry of Finance, dated 20 January 2000, published in the Official Journal of Chile on Saturday, 22 January 2000, and notified to the WTO on 10 February 2000 in document G/SG/N/8/CHL/1/Suppl.1, definitive safeguard measures were established on imports of wheat, wheat flour, sugar and vegetable oils, in the form of a tariff surcharge determined in accordance with Chilean legislation.

In a subsequent notification (G/SG/N/10/CHL/1/Suppl.2), dated 15 November 2000, Chile notified that it had decided to accept the request for a one-year extension of these measures. In document G/SG/N/10/CHL/1/Suppl.2/Corr.1, dated 27 November 2000, the Government of Chile subsequently explained that it was examining the possibility of extending the measures. The extension of the safeguard measures was adopted in Decree No. 294 ("exempt procedure") of the Ministry of Finance, which was published on 24 November 2000.

The Government of Colombia considers that the measure contained in Decree No. 9 ("exempt procedure") of the Ministry of Finance, dated 20 January 2000, concerning sugar, tariff subheadings 17.01.11.00.00, 17.01.12.00.00, 17.01.91.00.00 and 17.01.99.00.00, is inconsistent with the Agreement on Safeguards and with GATT 1994, for the following reasons:

- (i) It is inconsistent with Articles 3.1 and 5.1 of the Agreement on Safeguards insofar as the measure adopted does not meet the requirement that the surcharge applied must be proportionate to the alleged injury to the sugar industry. Furthermore, the applied surcharge was not defined as the result of an investigation, in accordance with the terms of the Agreement, demonstrating the need to increase the tariff protecting domestic industry to the eventual rate, but as a result of the application of pre-existing legislation.
- (ii) It is inconsistent with Article 2.1 of the Agreement on Safeguards insofar as the measure was adopted to encompass a group of products (raw sugar cane, raw beet sugar, other cane sugar containing flavouring or colouring and other cane sugar), which do not share the same trade patterns, without examining trends of indicators for each one of them. It has not been demonstrated by Chile that these different types of sugar are themselves like or directly competitive products.
- (iii) It is inconsistent with Article 4.1(c) of the Agreement on Safeguards insofar as the measure does not include a correct definition of domestic industry. The notifications mention both sugar beet growers and the industrial sector.
- (iv) It is inconsistent with Article 2.1 of the Agreement on Safeguards, given that total sugar imports are not increasing to an extent such as to cause or threaten to cause injury, since in the past four years there has been no increase in imports in terms of either value or volume.
- (v) It is inconsistent with Article 4.2(b) of the Agreement on Safeguards insofar as there is no objective evidence of the existence of a causal link between increased imports and serious injury or threat thereof.
- (vi) It is inconsistent with Article XIX, paragraph 1(a) of GATT 1994, since it is not demonstrated that the alleged increased imports are the result of unforeseen developments.
- (vii) It is inconsistent with Article 9.1 of the Agreement on Safeguards, since it failed to take into account trade figures for the subheadings of raw sugar and other sugars 17.01.11.10, 17.01.11.190 and 17.01.91.00, which show minimal or in some cases no imports, so that their share of total imports into Chile did not exceed an average of 3 per cent in 1998 and 1999, which should mean that these products are to be excluded for developing countries.

Likewise, the extension pursuant to Decree No. 294 ("exempt procedure") of the Ministry of Finance, is inconsistent with Articles 2, 3, 4, 5 and 9 insofar as it does not fulfil the conditions for the application of this type of measure. It is also inconsistent with Article 7.2 of the Agreement on Safeguards, since there is no evidence that the domestic industry is adjusting. It is inconsistent with Article 12.3 of the Agreement on Safeguards as well, since adequate opportunity was not provided for prior consultations with those Members having a substantial interest as exporters of sugar: the public hearing was held on 13 November 2000 and the notification of the extension was published on 15 November 2000, when the decision had already been taken to extend the measure.

In the light of these considerations, the Government of Colombia considers that the safeguard measures applied by Chile against sugar imports are inconsistent with Chile's obligations under the following provisions of the Agreement on Safeguards and GATT 1994:

1. Articles 2, 3, 4, 5, 7, 9 and 12 of the Agreement on Safeguards; and
2. Article XIX of GATT 1994.

The Government of Colombia reserves the right to raise additional factual and legal claims in the course of the consultations.

In this connection, Colombia requests consultations with Chile in accordance with Article XXII of GATT 1994, and looks forward to receiving a reply to this request from the Chilean authorities, as well as the establishment of a mutually acceptable time and place for the initiation of consultations.
