

**CHILE – PROVISIONAL SAFEGUARD MEASURE  
ON CERTAIN MILK PRODUCTS**

Request for Consultations by Argentina

The following communication, dated 25 October 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.

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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 provisional safeguard measure on imports of certain milk products.<sup>1</sup>

The measure in question includes Exempt Decree No. 278, published in the Official Journal of Friday 13 October 2006, the amendments and extensions thereto and any related amendments, and Record No. 282 of the National Commission responsible for investigating distortions (hereinafter the Record of the Commission).

The above-mentioned Decree provides for the application of a provisional safeguard of 23 per cent on 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; 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 tariff subheading 0406.9010.

The Argentine Government considers this measure to be inconsistent with Chile's obligations under the relevant provisions of the GATT 1994 and the Agreement on Safeguards.

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<sup>1</sup> The initiation of the investigation process was notified to the Committee on Safeguards by document G/SG/N/6/CHL/11, and the provisional measure by document G/SG/N/7/CHL/8.

Accordingly, the Argentine Government is of the view that Chile has departed from the provisions of the GATT 1994 and the Agreement on Safeguards in its determination, particularly as regards 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 the fact that the Commission Record in which application of the provisional measure is recommended does not properly develop the fundamental points relating to all pertinent issues of fact and law.
- **Unforeseen developments:** considering that there were no unforeseen developments warranting exceptional action such as the application of a safeguard measure.
- **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.
- **Increase in imports under conditions such as to cause or threaten 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 were not evaluated. Similarly, data relating to prices and milk deliveries to plants show positive signs. Moreover, in determining the threat of injury, the authority fails to demonstrate that the threat is clearly imminent.
- **Determination of causal link:** insofar as it has not been demonstrated, on the basis of objective evidence, that there exists a causal link between increased imports of the product concerned and injury or threat of serious and imminent injury to the domestic industry.
- **Notification of the measure:** insofar as there was observed to be no obligation to notify the measure prior to its adoption.

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.
- Agreement on Safeguards:
  - (3) Article 2;
  - (4) Article 3.1;
  - (5) Article 4;
  - (6) Article 5.1;
  - (7) Article 6;
  - (8) Article 12.4.

In these circumstances, Argentina requests consultations with Chile, pursuant to Article XXIII:1 of the GATT 1994, Article 4 of the DSU and the respective rules of the Agreement on Safeguards, and proposes that they be held as early as possible at a mutually agreed date and place. In addition, I have been instructed to indicate that my Government reserves the right to raise further factual or legal claims during those consultations.

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