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CHILE – PRICE BAND SYSTEM AND SAFEGUARD MEASURES RELATING TO CERTAIN AGRICULTURAL PRODUCTS

Request for Consultations by Argentina

The following communication, dated 5 October 2000, from the Permanent Mission of Argentina 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.

I have been instructed by my Government to contact you in order to request consultations with Chile pursuant to Article XXIII:1 of the GATT 1994 and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) – insofar as it is an elaboration of Article XXIII:1 of the GATT 1994 – as well as Article 14 of the Agreement on Safeguards and Article 19 of the Agreement on Agriculture. This request is related to the price band system and the imposition by the Chilean authorities of provisional and definitive safeguard measures on imports of wheat, wheatflour and edible vegetable oils.

With respect to the price band system, Law 18.525, as amended by Law 18.591 and subsequently by Law 19.546, as well as the regulations and complementary provisions and/or amendments establishing the said system, would appear to be inconsistent with various provisions of the GATT 1994. Thus, the price band system neither ensures the predictability nor provides the certainty in respect of market access for agricultural products to which Chile committed itself following the conclusion of the GATT Uruguay Round. Moreover, the price band system has caused Chile to breach its commitments on tariff bindings in relation to the concessions set forth in its national schedule. In addition, the price band system would appear to violate Chile's commitments under the Agreement on Agriculture, given the tariffication agreed upon in the Uruguay Round.

The said legislation would appear to be inconsistent, *inter alia*, but not exclusively, with the following provisions of the WTO Agreements:

Article II of the GATT 1994;

Article 4 of the Agreement on Agriculture.

With respect to safeguards, on 25 October 1999 Chile notified to the WTO (G/SG/N/6/CHL/2) the initiation, by the National Commission responsible for investigating the existence of distortions in the price of imported goods, of an investigation concerning products subject to the price band system.

On 19 November, Chile adopted, by Decree No. 339 of the Ministry of Finance published in the *Diario Oficial* (Official Journal) of 26 November 1999, provisional safeguard measures on certain

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imports, including wheat, wheat flour and edible vegetable oils. In accordance with the notification circulated (G/SG/N/7/CHL/2/Suppl.1), the measure consists of an *ad valorem* tariff surcharge corresponding to the difference between the general tariff added to the equivalent of the *ad valorem* specific duty determined by the mechanism set out in Article 12 (price bands) of Law 18.525 – and its relevant annual implementing decrees – and the level bound in the WTO for these products.

On 18 January 2000, Chile notified to the WTO the determination of threat of injury and its decision to apply a definitive safeguard measure (G/SG/N/8/CHL/1 and G/SG/N/10/CHL/1).

On 20 January 2000, by Decree No. 9 of the Ministry of Finance, definitive safeguard measures were established on products subject to price bands according to the same modalities as were applied to the provisional measures hitherto in force (notified to the WTO on 1 February 2000 in G/SG/N/8/CHL/1/Suppl.1 and G/SG/N/10/CHL/1/Suppl.1).

Argentina is seriously concerned about the consistency of the measures adopted with the Agreement on Safeguards.

Firstly, there is no precise definition of the like or directly competitive product, nor of the criteria used for the determination thereof. Nor is there any detailed description of the domestic industry affected. Similarly, Argentina has doubts concerning the appropriateness and/or relevance of the period of investigation used. Nor is it clear that the products have been imported in such increased quantities, absolute or relative to domestic production, as to cause or threaten to cause serious injury to the domestic industry.

Moreover, there appears to have been an incomplete evaluation of all of the relevant factors. From the information available, it would appear that the determination of injury was based on a hypothesis substantiated by mere allegation. In this context, there does not appear to be any evidence of the causal link, nor has there apparently been an analysis of other factors that might be affecting the domestic industry.

At the same time, it is not clear to Argentina that any report has been published setting forth the findings and reasoned conclusions reached on all pertinent issues of fact and law. Nor is there any indication that there has been an unforeseen evolution of the circumstances or identification of the critical circumstances justifying the adoption of provisional measures. Argentina has found no references to any adjustment plan for the industry which would have enabled the Chilean Government to evaluate the relationship of such a plan with the scope of the measures applied. Finally, in Argentina's view the Chilean authorities have not provided an adequate opportunity for consultations under the Agreement on Safeguards.

In the light of the above considerations, Argentina considers the safeguard measures to be inconsistent with Chile's obligations under the following provisions of the Agreement on Safeguards and the GATT 1994, *inter alia*:

- Articles 2, 3, 4, 5, 6 and 12 of the Agreement on Safeguards; and

- Article XIX:1(a) of the GATT 1994.

In these circumstances, the Republic of Argentina requests consultations with the Republic of Chile under Article XXIII:1 of the GATT 1994 at a mutually agreed date and place.