

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

Recourse to Article 21.5 of the DSU by Argentina

Notification of an Appeal by Chile
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 5 February 2007, from the Delegation of Chile, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the Working Procedures for Appellate Review, Chile hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel on *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products - Recourse to Article 21.5 of the DSU by Argentina* (WT/DS207/RW) and certain legal interpretations developed by the Panel.

Chile seeks review by the Appellate Body of certain Panel conclusions that are in error and are based upon erroneous findings on issues of law and on related legal interpretations.

1. The Panel failed to determine and apply the appropriate burden of proof applicable to a dispute settlement proceeding under Article 21.5 of the DSU by allocating to Chile the burden to prove that Law 19.897 and Supreme Decree 831 (collectively, the "Implementing Measure") were no longer WTO inconsistent rather than allocating the burden to Argentina to prove that the Implementing Measure was inconsistent with Chile's WTO obligations under Article 4.2 and footnote 1 of the *Agreement on Agriculture*.¹

2. The Panel erred in its interpretation of Article 4.2 and footnote 1 of the *Agreement on Agriculture* by failing to give effect to the language "other than ordinary customs duties" in footnote 1,² by failing to examine "similarity" with variable import levies and minimum import prices on an empirical basis with reference to the actual effects of the Implementing Measure,³ by

¹The Panel's errors are reflected in its overall analysis in paragraphs 7.14 to 7.104, most notably in its findings in paragraphs 7.14, 7.44, 7.54, 7.55, 7.79, 7.81, 7.92, 7.96, and in its findings in relation to the parties' comments on the interim report in paragraphs 6.8 to 6.12, most notably paragraph 6.12.

²The Panel's error is set forth in paragraphs 7.14, 7.20, 7.54, 7.81, 7.92 and 7.104.

³The Panel's error is set forth in paragraphs 6.9 to 6.12 and 7.97 to 7.103 and otherwise apparent from the Panel's analysis in paragraphs 7.14 to 7.104.

misinterpreting the term "variable" in footnote 1, including in a manner not in accordance with the Appellate Body's findings,⁴ by interpreting the terms "transparency" and "predictability" in a manner not in accordance with the Appellate Body's findings,⁵ and by otherwise developing a legal test for compliance with Article 4.2 and footnote 1 of the *Agreement on Agriculture* that is internally contradictory and not in accordance with the Appellate Body's findings in the prior dispute.⁶

3. The Panel erred in its application of Article 4.2 and footnote 1 of the *Agreement on Agriculture* to the Implementing Measure, including its findings relating to whether the Implementing Measure, was similar to a "variable import levy"⁷ and its findings relating to whether the Implementing Measure was similar to a "minimum import price"⁸ particularly when such an analysis is appropriately conducted on an empirical basis.

4. The Panel acted inconsistently with its obligations under Article 11 of the DSU to "make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements" and Article 12.7 of the DSU to set out "the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes" by, *inter alia*:

- (a) concluding, without explanation, that the Ministry of Finance violated Chilean law in establishing the levels of the price bands;⁹
- (b) failing, without explanation, to correct errors in the Original Panel's characterization of the Price Band System, although the Panel relied on such characterization in making its own findings;¹⁰
- (c) conducting only a cursory review of relevant features of the Implementing Measure in isolation;¹¹ and
- (d) failing to consider empirical evidence on the actual operation of the Implementing Measure.¹²

Chile respectfully requests that the Appellate Body reverse the findings and conclusions of the Panel and modify accordingly the recommendations and rulings of the Panel.¹³

⁴The Panel's errors are set forth in paragraphs 7.28 and 7.55 to 7.104.

⁵The Panel's errors are set forth in paragraphs 7.28 and 7.55 to 7.104.

⁶The Panel's errors are reflected in its overall analysis in paragraphs 7.14 to 7.104.

⁷The Panel's error is set forth in paragraphs 7.55 to 7.104, in particular paragraphs 7.55 to 7.81.

⁸The Panel's errors are reflected in paragraphs 7.55 to 7.104, in particular paragraphs 7.82 to 7.92.

⁹The Panel's error is set forth in paragraph 7.79.

¹⁰The Panel's error is set forth in paragraphs 6.14, 7.40(d), 7.48, 7.50, 7.75, and 7.86 to 7.88.

¹¹The Panel's errors are reflected in its overall analysis in paragraphs 7.14 to 7.104.

¹²The Panel's errors are reflected in its overall analysis in paragraphs 7.14 to 7.104 and in its findings in relation to the parties' comments on the interim report in paragraphs 6.8 to 6.12.

¹³See paragraphs 8.2(a), 8.3, and 8.4.