

**ARGENTINA – DEFINITIVE SAFEGUARD MEASURE  
ON IMPORTS OF PRESERVED PEACHES**

Request for Consultations by Chile

The following communication, dated 14 September 2001, from the Permanent Mission of Chile to the Permanent Mission of Argentina 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 Argentina pursuant to Article XXIII:1 of the GATT 1994, Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), and Article 14 of the Agreement on Safeguards. This request is related to the definitive safeguard measure applied by the Government of Argentina on imports of peaches preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water (MERCOSUR tariff headings 2008.70.10 and 2008.70.90).

On 15 January 2001, Argentina notified the WTO of the initiation of an investigation concerning the imposition of a safeguard measure and gave prior notice, under Article 12.4 of the Agreement on Safeguards, of the adoption of a provisional safeguard measure on the above products (G/SG/N/6/ARG/4 and G/SG/N/7/ARG/2). On 30 January 2001, Chile requested consultations, also pursuant to Article 12.4, which took place in Geneva on 2 March.

On 17 July 2001, Argentina notified the WTO of its finding of serious injury and decision to apply a definitive safeguard measure (G/SG/N/8/ARG/4, and G/SG/N/10/ARG/3 and G/SG/N/11/ARG/3). Pursuant to Article 12.3 of the Agreement on Safeguards, Chile requested consultations, which took place in Buenos Aires on 16 August 2001.

Chile considers this definitive safeguard measure to be inconsistent with the WTO rules. It is having serious adverse effects on the competitiveness of Chilean products of the above description in the Argentine market.

Chile does not consider that the condition of "unforeseen developments", provided for in Article XIX:1 of the GATT 1994, has been fulfilled. Nor is it clear that the products have been imported in increased quantities, absolute or relative to domestic production, as required by that Article and by the Agreement on Safeguards. Nor has any evidence been given of injury or threat of injury to the domestic industry, since the investigation's conclusions concerning an alleged causal link were merely declaratory.

In the Minutes (No. 781) of the investigating authority, the existence is clearly established of objective and quantifiable factors, other than the alleged increase in imports, which might be responsible for the loss in market share claimed to be experienced by the domestic industry. Failing to analyse the injury caused by those factors, the investigating authority attributed all the injury to alleged increased imports.

The level, determination and scope of the definitive safeguard measure are greater than the extent necessary to prevent or remedy serious injury and to facilitate adjustment. A specific duty of US\$0.50 per kg. has been arbitrarily imposed, which in *ad valorem* terms and in relation to Chilean production, represents nearly an extra 70 per cent on the customs duties applicable to Chile (19.6 per cent). Chile considers that the extent of the measure is unreasonable, prohibitive, and equivalent to an import prohibition. Since the safeguard measure has been in force, Argentina has in fact failed to register any imports of canned peaches from Chile or from any other trading partner.

In the light of the above considerations, Chile considers the definitive safeguard measure imposed on imports of canned peaches to be inconsistent with various WTO provisions, *inter alia*, Articles 2, 4, 5 and 12 of the Agreement on Safeguards and paragraph 1 of Article XIX:1 of the GATT 1994.

I await your reply to this request for consultations in order to establish a mutually convenient date for holding them.

---