

**PROVISIONAL SAFEGUARD MEASURE IMPOSED BY CHILE
ON POWDERED MILK AND LIQUID UHT MILK**

Request for Consultations under Article 12.4
of the Agreement on Safeguards

The following communication, dated 3 November 2000, has been received from the Permanent Delegation of the European Commission.

On 30 June 2000, Chile notified the WTO (G/SG/N/6/CHL/4) that it had initiated an investigation on powdered milk and liquid UHT milk. On 3 July 2000, Chile notified its intention of applying a safeguard measure (G/SG/N/7/CHL/3). On 12 July 2000, under Ministry of Finance Decree No. 231, Chile imposed the provisional safeguard measure on imports of powdered milk and liquid UHT milk (G/SG/N/7/CHL/3/Suppl.1), which consists of establishing an *ad valorem* tariff surcharge of 16 per cent on imports of these products.

The European Commission is seriously concerned about the consistency of this measure with the Article XIX GATT and the Agreement on Safeguards. From the scant information available so far, it considers that the requirements laid down in the Agreement on Safeguards for the adoption of a provisional safeguard measure have not been satisfied.

The available facts do not justify the conclusion that there has been an increase in imports in absolute terms or relative to domestic production, nor does there appear to be any clear evidence that the increase in imports has caused serious injury or threat of serious injury, in particular given the very moderate market share attributable to imports. Serious doubts can also be expressed concerning the causal link between imports and the serious injury, and the impact of other factors.

Furthermore, Chile has not proved the existence of critical circumstances such as to justify the adoption of a provisional measure as provided by Article 6 of the Agreement on Safeguards. Neither has the duration of the measure been specifically notified.

Furthermore, the notification and publication obligations laid down in the Agreement do not appear to have been complied with, and the expedited procedure casts some doubts on whether the investigation has been carried out with the necessary degree of diligence.

In these circumstances, and since the consultations which, under the Agreement on Safeguards, should commence immediately, have not taken place, the European Commission formally requests the holding of consultations under Article 12.4 with the objective of reviewing the information provided and obtaining further information concerning the safeguard measure, and requests Chile not to take any new measures until consultations have taken place.

Accordingly, it is proposed that consultations be held forthwith at a mutually agreed date and place.

In the meantime, the European Commission request the Chilean authorities to suspend immediately the provisional safeguard measure and to bring their action in conformity with the discipline of the WTO Agreement on Safeguards.

The European Commission reserves all its rights under the Agreement on Safeguards, in particular Article 14, as well as under the Dispute Settlement Understanding.
