

# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/DS14/5**

15 September 1995

(95-2656)

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Original: Spanish

## EUROPEAN COMMUNITIES - TRADE DESCRIPTION OF SCALLOPS

### Request for the Establishment of a Panel

The following communication, dated 13 September 1995, from the Permanent Mission of Chile to the Chairman of the Dispute Settlement Body is circulated at the request of that Delegation.

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As you know, on 24 July 1995 the Permanent Mission of Chile addressed a note to the Permanent Representative of the European Union to the WTO requesting consultations under Article XXII:1 of GATT 1994. The European Union replied favourably to this request for consultations, which were conducted on 10 August last.

The purpose of the consultations was to find a solution to the problem arising out of the trade description of Chilean scallops on the French market, which is nullifying and impairing benefits accruing to Chile under the WTO, and to assess their consistency with the provisions of the Agreement on Technical Barriers to Trade (Articles 2:1 and 2:2) and Articles I and III of GATT 1994.

Before requesting consultations, Chile made many representations to both the French and the Community authorities in an effort to settle the issue without having to resort to the mechanisms of the multilateral trading system. Furthermore, given its substantial interest in the export of scallops to France, Chile associated itself with the consultations requested by Canada under Article XXII, which took place on 19 June 1995.

Unfortunately, so far neither the steps and initiatives taken by the Government of Chile nor the consultations held have produced satisfactory results that would enable molluscs of the genus Pectinidae, to which the Chilean mollusc Agropecten Purpuratus belongs, to be marketed in France without restrictions.

The Government of Chile will continue searching for a mutually satisfactory solution to the matter within the terms and time-limits provided for in the consultation process of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Nevertheless, if after 60 days counting from 24 July, date of receipt of our request by the EC, the issue arising out of the trade description of Chilean scallops has not been resolved, the Government of Chile reserves the right to request, at the forthcoming meeting of the Dispute Settlement Body to be held on 27 September, the establishment of a panel pursuant to Article XXIII of GATT 1994, Article 14 of the Agreement on Technical Barriers to Trade and Articles 4 and 6 of the Understanding. Should this happen, Chile will request that the panel be established in accordance with the terms of the attached document.

For the above reasons, I ask you to include in the agenda for the Dispute Settlement Body's meeting scheduled for 27 September 1995 the request of the Government of Chile for the establishment of a panel.

Lastly, the Government of Chile wishes to stress that it will pursue its efforts to reach a mutually satisfactory solution to this dispute before 24 September next, when the consultation period will end, so as to obviate the need for the request for the establishment of a panel.

ANNEX

I have the honour to refer to the trade description of molluscs of the genus Pectinidae.

On 24 July 1995, the Government of Chile requested the European Union to hold consultations concerning the French Government Order (NOR MERP9300051 A) of 22 March 1993 and amendments thereto relating to the official names and permitted trade descriptions of molluscs of the genus Pectinidae (scallops). In accordance with Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), that request was circulated to Members of the World Trade Organization on 31 July 1995 (WT/DS14/1).

The Government of Chile requested consultations in order to find a solution to the trade description problem caused by the above-mentioned Order, which imposes the use of the trade description "pétoncle" for the pectinid mollusc of Chilean origin as from 1 January 1996. This term entails a trade injury as on the French market it is associated with a product of lower quality and price compared with the traditional description of "Coquilles St. Jacques" or "Noix de St. Jacques" under which the Chilean product was sold in that market.

Chile and the European Union held consultations in Geneva on 10 August 1995 with a view to reaching a satisfactory resolution of the matter. Previously, Chile had associated itself with the consultations held by Canada with the European Union on 19 June 1995 on this same matter.

Unfortunately, the consultations failed to settle the dispute and further consultations are not likely to be productive. In accordance with Article XXIII of GATT 1994, Article 14 of the Agreement on Technical Barriers to Trade and Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Chile hereby requests that a panel be established at the next meeting of the Dispute Settlement Body scheduled for 27 September 1995.

Chile requests that the panel consider and find that the Order and the subsequent amendments thereto are:

- (a) inconsistent with Articles 2 and 12 of the Agreement on Technical Barriers to Trade;
- (b) inconsistent with Article III of GATT 1994;
- (c) inconsistent with Article I of GATT 1994; and
- (d) nullifying and impairing benefits accruing to Chile pursuant to the WTO.

Chile requests that the panel be established with the standard terms of reference as set out in Article 7 of the DSU. Chile further requests that this request for the establishment of a panel be included in the agenda of the meeting of the Dispute Settlement Body scheduled for 27 September 1995.

A copy of this note will be sent to the WTO for inclusion of the item in the agenda of the next meeting of the DSB and circulation to all members.

Accept, Sir, the renewed assurances of my highest consideration.