

***Chile - Price Band System and Safeguard Measures Relating to Certain Agricultural Products***

(WT/DS207)

THIRD-PARTY ORAL STATEMENT OF THE UNITED STATES

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**Introduction**

1. Mr. Chairman and Members of the Panel, it is my honor to appear before you to present the views of the United States as a third party in this proceeding. Instead of repeating the points we have presented in our written submission, I will limit my comments to highlighting (1) the lack of foundation for Chile's assertion that its price band system is not a variable import levy and (2) the protective effect of variable import levies even if a tariff binding has not been exceeded.

**Discussion**

***Ordinary Meaning of "Variable Import Levy"***

2. Chile has asserted that its price band system is not a "variable import levy" under footnote 1 to Article 4.2 of the *Agreement on Agriculture*. However, it has not established that the price band system does not fall within the ordinary meaning of that term.

3. When relating to a quantity or number, "variable" is defined as "liable to vary, having

various values in different instances or at different times (*The New Shorter Oxford English Dictionary*, vol. 2, p. 3547 (other definitions include “mutable, changeable, fluctuating, uncertain” and “that may be varied, changed, or modified; alterable”)). “Import,” of course, refers to “something imported or brought in” (*Id.*, vol. 1, p. 1323). “Levy” is defined as “the collection of an assessment, duty or tax” (*Id.*, vol. 1, p. 1574). Thus, a “variable import levy,” according to the ordinary meaning of those terms, would be “the collection of an assessment, duty or tax” that has “various values in different instances or at different times” on “something that is imported or brought in.” The United States considers that this definition captures the Chilean price band system perfectly.

4. This ordinary meaning of the term “variable import levy” is confirmed by its context and in light of the object and purpose of the *Agreement on Agriculture*. The Preamble to the Agreement gives one goal as “establish[ing] . . . strengthened and more operationally effective GATT rules and disciplines” and “achieving specific binding commitments” in the area of “market access.” Article 4.2 serves this purpose by eliminating the use of *all* border measures other than “ordinary customs duties” – hence the comprehensive definition of prohibited measures (“These measures *include* . . . [a list of examples] and *similar* border measures other than ordinary customs duties.”). As stated in our written submission, “ordinary customs duties” are “generally recognized to refer to specific duties that are based on a physical quantity or measure of imported product or *ad valorem* duties that are based on a fixed percentage of the value of the imported product.” (U.S. Third-Party Submission, para. 12.) These permitted “ordinary customs duties,” whether specific or *ad valorem*, are unchanging in value and

completely transparent. Thus, read in context and in light of the object and purpose of the *Agreement*, the use of the term “variable import levy” is meant to improve market access by extending the prohibition in Article 4.2 to a measure that results in “the collection of an assessment, duty or tax” that has “various values in different instances or at different times” on “something that is imported or brought in” – that is, a measure that shares neither transparency nor definiteness with “ordinary customs duties.”

5. It is notable that the one third-party submission to assert that the Chilean price band system is not a variable import levy, that of Colombia, does not provide a definition that contradicts the ordinary meaning of those terms. Rather, Colombia merely asserts that “variable levy” is to be distinguished from “variable tariff” or “variable duty” and that price bands “fall within the definition of customs duties.” (Third Party Submission of Colombia, para. 21.) However, as the foregoing definition makes clear, a “levy” may serve to collect “an assessment, *duty* or tax.” Thus, on its face, a “variable levy” may be a “variable duty” and would still fall within the ordinary definition of the measure prohibited by footnote 1 of Article 4.2.

***Prohibition on Variable Import Levies Serves Purpose Apart From Tariff Binding***

6. The United States has rebutted Chile’s numerous arguments regarding the interpretation of Article 4.2 in its written submission. I will not reiterate our arguments establishing that Chile’s reading of the text of Article 4.2 fails to give meaning and effect to all of the terms of that provision and does not read those terms according to their ordinary meaning. However, I

will make one additional comment on Article 4.2's prohibition on variable import levies.

7. Part of Chile's difficulty in seeing that its price band system is a variable import levy apparently stems from the fact that it has tariff bindings on the products subject to price bands. However, the ordinary meaning of the term "variable import levy," when read in context and in light of the object and purpose of the *Agreement*, establishes that the existence of a variable import levy is in no way contingent on the absence of a tariff binding. Even if the tariff is bound and never exceeded, moreover, a tariff mechanism that sets duties as "various values in different instances or at different times" based on exogenous factors (such as historical and current world prices) qualifies as a "variable import levy" under footnote 1 to Article 4.2.

8. Finally, I would note that tariff bindings do not ameliorate the protective effect of a variable import levy. As Professor Jackson noted in 1969, "[b]eyond the amount of the particular duty imposed on a given product at a certain time, there is an additional protective effect [to a variable import levy] by virtue of the fact that the duty varies. If traders and producers cannot plan on a certain degree of profitability for their products, they will be hesitant to exercise the effort required to introduce those products into a foreign market." (J. Jackson, *World Trade and the Law of GATT*, p. 521.) Thus, the inclusion of "variable import levies" in the list of prohibited measures in footnote 1 to Article 4.2 serves to prevent the use of a device that may negatively affect trade, regardless of whether the tariff binding is exceeded.

## **Conclusion**

9. Chile's interpretation of Article 4.2, if credited, would reduce the certainty in export opportunities that the prohibition on variable import levies is designed to induce. Given the long history of distortions of agricultural trade, it is no exaggeration to say that the prohibition of measures other than ordinary customs duties set forth in Article 4.2 was one of the fundamental accomplishments of the Uruguay Round. The numerous third-party submissions filed in this dispute, nearly all of which condemn the Chilean price band system as a variable import levy prohibited by Article 4.2, give some sense of the significance of the interpretation the Panel is asked to render.

10. This concludes my presentation. On behalf of the United States, I thank you again for this opportunity to express our views.