

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

*Report of the Panel*

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## I. INTRODUCTION

1.1 On 14 September 2001, Chile requested consultations with Argentina pursuant to Article XXIII:1 of the General Agreement on Trade and Tariffs of 1994 (the "GATT 1994"), Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU") and Article 14 of the Agreement on Safeguards. This request was related to the definitive safeguard measure applied by Argentina on imports of peaches preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water, imported under MERCOSUR Common Nomenclature (MCN) tariff codes 2008.70.10 and 2008.70.90.<sup>1</sup>

1.2 The consultations took place on 2 November 2001, but the parties failed to reach a mutually satisfactory solution. On 6 December 2001, Chile requested the Dispute Settlement Body (the "DSB") to establish a panel, in accordance with Articles 4 and 6 of the DSU in order to examine the definitive safeguard measure applied by Argentina on imports of preserved peaches.<sup>2</sup>

1.3 At its meeting on 18 January 2002, the DSB established a Panel in accordance with Article 6 of the DSU.<sup>3</sup> At that meeting, the parties agreed that the Panel should have standard terms of reference. The terms of reference of the Panel were, therefore, the following:

1.4 "To examine, in the light of the relevant provisions of the covered agreements cited by Chile in document WT/DS238/2, the matter referred to the DSB by Chile in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."<sup>4</sup>

1.5 On 16 April 2002, the parties agreed to the following composition of the Panel:<sup>5</sup>

Chair: Ms. Elaine Feldman

Members: Mr. Jorge Castro Bernieri  
Mr. Mateo Diego-Fernandez

1.6 The European Communities, Paraguay and the United States reserved their rights to participate in the Panel proceedings as third parties.

1.7 The Panel met with the parties on 10 and 11 July 2002 and on 11 September 2002. The Panel met with the third parties on 11 July 2002.

1.8 The Panel submitted its interim report to the parties on 21 November 2002. The Panel submitted its final report to the parties on 16 December 2002.

## II. FACTUAL ASPECTS

2.1 This dispute concerns the imposition of a definitive safeguard measure by Argentina on imports of peaches preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water, imported under MCN tariff codes 2008.70.10 and 2008.70.90.

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<sup>1</sup> See WT/DS238/1.

<sup>2</sup> See WT/DS238/2.

<sup>3</sup> See WT/DSB/M/117.

<sup>4</sup> See WT/DS238/3.

<sup>5</sup> Ibid.

## 1. Regulatory framework

2.2 Argentina incorporated the Agreement on Safeguards into its domestic legislation by means of Law No. 24,425 of 7 December 1994.<sup>6</sup> The Argentine regulatory framework for the conduct of safeguard investigations and the eventual imposition of safeguard measures is contained in Decree No. 1059/96 of 19 September 1996.<sup>7</sup> Law No. 19,549<sup>8</sup> (Law on Administrative Procedure of the Republic of Argentina), together with its Regulatory Decree No. 1759/72<sup>9</sup>, regulates the administrative proceeding in general and is of suppletory application when there are gaps in the specific legislation.<sup>10</sup> Argentina has notified these laws, regulations and administrative procedures relating to safeguard measures to the WTO Committee on Safeguards.<sup>11</sup>

2.3 Decree No. 1059/96 provides that a safeguard measure may be applied only after an investigation has been conducted by the competent authority, which is the Minister of the Economy.<sup>12</sup> On receipt of an application for the initiation of a safeguards investigation, the Secretariat of Industry, Trade and Mining, which is within the Ministry of the Economy (the "ME"), refers the matter to the Undersecretariat of Foreign Trade<sup>13</sup> and to the National Foreign Trade Commission (the "CNCE")<sup>14</sup> who prepare a technical report prior to the final determination<sup>15</sup> (the "technical report") on whether or not there exist increased imports of the product in question which have caused or threaten to cause serious injury.<sup>16</sup> The CNCE is the authority responsible for the analysis, investigation and regulation in the determination of injury to domestic production.<sup>17</sup> After examining their reports<sup>18</sup>, the Secretariat of Industry, Trade and Mining submits a report to the Minister of the Economy indicating whether or not a safeguard measure should be adopted.<sup>19</sup> In the present case that report was Record No. 781.<sup>20</sup> The Minister then issues a resolution, which is published in the Official Bulletin, thereby providing public notice of the decision adopted as a result of the investigation. This resolution considers the different reports or determinations issued by the competent authorities in accordance with the prerogatives granted by the legislation in question, and introduces the administrative act containing a summary of the results of the injury investigation conducted and the reasons which led to the decision to adopt a safeguard measure, as well as the modalities of its adoption.<sup>21</sup> In the present case that resolution is Resolution ME No. 348/2001 of 6 August 2001, published in the Official Bulletin of 7 August 2001.

## 2. Safeguards investigation

2.4 On 27 November 2000, the Argentine Chamber of Industrial Fruit Production of Mendoza ("CAFIM") requested the predecessor of the Secretariat of Industry, Trade and Mining, within the

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<sup>6</sup> Published in the Official Bulletin of Argentina (the "Official Bulletin") by the Ministry of External Relations and Culture, 5 January 1995.

<sup>7</sup> Published in the Official Bulletin by the Ministry of the Economy, Public Works and Services, 24 September 1996.

<sup>8</sup> Published in the Official Bulletin by the Ministry of Justice, 27 April 1972.

<sup>9</sup> *Ibid.*

<sup>10</sup> See Article 2 of Law No. 19,549. See footnote 8 of the present report.

<sup>11</sup> See G/SG/N/1/ARG/1, G/SG/N/1/ARG/2, G/SG/N/1/ARG/3 and G/SG/N/1/ARG/3/Suppl.1.

<sup>12</sup> See Articles 1 and 7 of Decree No. 1059/96. The Panel understands that the Ministry of the Economy was formerly known as the Ministry of the Economy, Public Works and Services.

<sup>13</sup> The Undersecretariat of Foreign Trade is part of the SICyM within the ME.

<sup>14</sup> The CNCE is a decentralized agency of the SICyM, established by Decree No. 766 of 12 May 1994.

<sup>15</sup> "Informe Técnico previo a la Determinación Final".

<sup>16</sup> See Article 10 of Decree No. 1059/96.

<sup>17</sup> See Article 1 of Decree No. 766/94.

<sup>18</sup> See Article 11 of Decree No. 1059/96.

<sup>19</sup> See Article 17 of Decree No. 1059/96.

<sup>20</sup> Record No. 781 is included in Exhibit CHL-1.

<sup>21</sup> See Argentina's response to questions Nos. 1 to 3 of the Panel.

ME, to initiate an investigation for the application of a safeguard measure on imports of peaches preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water, imported under MCN tariff codes 2008.70.10 and 2008.70.90 ("preserved peaches").<sup>22</sup>

2.5 On 2 January 2001, by Record No. 711, the Board of Directors of the CNCE decided by majority of its members that the application contained sufficient evidence of threat of serious injury to the domestic industry caused by imports, thereby meeting the conditions laid down by the regulations in force to implement possible provisional safeguard measures.<sup>23</sup>

2.6 On 5 January 2001, the predecessor of the Undersecretariat of Foreign Trade issued a technical opinion where it found that there was a causal relationship between the increase in imports and the threat of serious injury to the domestic industry and that the proposed adjustment plan was viable. It concluded that sufficient reasons existed in terms of timing, merit and advisability to justify the opening of an investigation and the adoption of a provisional safeguard measure.<sup>24</sup>

2.7 Accordingly, Resolution ME No. 39 of 12 January 2001, published in the Official Bulletin on 18 January 2001<sup>25</sup>, announced the opening of a safeguards investigation of imports into Argentina of peaches, preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water, imported under MCN tariff codes 2008.70.10 and 2008.70.90, establishing provisional minimum specific duties amounting to US\$0.50 per kg. net for a period of 200 days.<sup>26</sup>

2.8 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 preserved peaches.<sup>27</sup>

2.9 On 20 March 2001, a public hearing was held so that the parties involved in the investigation could set forth their arguments.<sup>28</sup>

2.10 The CNCE conducted the investigation taking into account information received from domestic producer companies in response to a CNCE questionnaire. The CNCE sent its questionnaire to all the companies registered as producers with CAFIM and received replies from six, of which five, representing 59 per cent of production in 2000, were verified, according to the Annex to Record 781. Those five surveyed companies<sup>29</sup> are La Colina, IAM, Cartellone, Benvenuto and Arcor.<sup>30</sup>

2.11 On 2 July 2001, the Board of Directors of the CNCE<sup>31</sup> met and, having concluded that the domestic industry was faced with a threat of serious injury within the meaning of Article 4 of the Agreement on Safeguards and that this was happening in the context of unforeseen developments,

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<sup>22</sup> See G/SG/N/8/ARG/4/Suppl. 1 and Annex to Record No. 781, page 1 in Exhibit CHL-1.

<sup>23</sup> Ibid.

<sup>24</sup> See Resolution No. 348/2001, in Exhibit CHL-2.

<sup>25</sup> Published in the Official Bulletin of Argentina, 18 January 2001.

<sup>26</sup> See G/SG/N/8/ARG/4/Suppl. 1 and Annex to Record No. 781, page 1, in Exhibit CHL-1.

<sup>27</sup> See WT/DS/238/1.

<sup>28</sup> See G/SG/N/8/ARG/4/Suppl. 1 and Annex to Record No. 781, page 1, in Exhibit CHL-1.

<sup>29</sup> The surveyed companies ("relevamiento"), according to the Annex to Record No. 781, are the companies that replied to the questionnaire for domestic producers. A company called Nieto was removed from the survey upon verification because the information it provided could not be correlated with the supporting documentation. See Annex to Record No. 781, page 5.

<sup>30</sup> See Annex to Record No. 781, page 5 in Exhibit CHL-1.

<sup>31</sup> The Panel notes that according to Article 5 of Decree No. 766/94, the CNCE Board of Directors consists of one Chairman and 4 Members. However, Record No. 781 shows that two directors, including the Chairperson, voted in favour of the safeguard measure and two directors voted against. Since, pursuant to Article 11 of Decree No. 766/94 the chairperson holds a casting vote, the CNCE thus voted in favour of the safeguard measure.

found that the conditions justifying the application of a safeguard measure had been satisfied.<sup>32</sup> Record No. 781 is the minutes of that meeting of the Board of Directors, and is part of investigation file No. 94/00, which includes technical report No. 08/01 as an integral part.<sup>33</sup>

2.12 On 17 July 2001, Argentina notified the WTO Committee on Safeguards pursuant to Articles 12.1(b), 12.1(c) and Article 9, footnote 2, of the Agreement on Safeguards, on its making a finding of serious injury or threat thereof caused by increased imports, its taking a decision to impose a definitive safeguard measure and the non-application of the safeguard measure to South Africa, respectively.<sup>34</sup>

2.13 In Resolution No. 348/2001, published in the Official Bulletin on 7 August 2001, the Minister of Economy stated that after having ascertained that there had been an increase in imports in circumstances such as to cause a threat of serious injury to domestic production and after the analysis by the Secretariat of Trade of that Ministry, he concluded that the legal conditions and other reasons existed in terms of timing, merit and advisability to justify the application of a safeguard measure. Accordingly, the Minister of Economy ordered the closing of the safeguard investigation and imposed a definitive safeguard measure consisting of minimum specific duties on imports of the product at issue for a period of three years starting from the entry into force of the provisional measure and amounting to US\$0.50 per kg/net during the first year, US\$0.45 during the second year and US\$0.40 during the third year.<sup>35</sup>

### 3. Customs duties and countervailing measures

2.14 At the time Argentina began to apply the provisional safeguard measure, it applied a customs tariff of 16.5 per cent on imports of preserved peaches, but a preferential tariff of 11.5 per cent for imports originating in Chile, in accordance with an Economic Complementarity Agreement No. 35. During the safeguard investigation and prior to the imposition of the definitive measure, the applied customs tariff increased to 30 per cent then settled at 28 per cent (19.6 per cent for Chile). In March 2002, Argentina restored the tariff to its original level of 16.5 per cent (11.5 per cent for Chile).<sup>36</sup>

2.15 Argentina imposed countervailing duties on imports of peaches in syrup from the European Union in accordance with Resolution MEyOSP No. 06/96, which entered into force on 9 January 1996. The countervailing duty was imposed at a differential rate, according to the country of origin, on the f.o.b. import price for a period of five years (18.12 per cent for Italy, 12.55 per cent for Spain and 12.13 per cent for the other EU member States). At the beginning of 2002, Argentina reviewed the countervailing duties and decided to maintain them but at a single rate of 10.5 per cent for all EU member States.<sup>37</sup>

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<sup>32</sup> See Record No. 781, page 1 and 2 in Exhibit CHL-1.

<sup>33</sup> See Chile's first written submission, paragraph 3.7.

<sup>34</sup> See G/SG/N/8/ARG/4, G/SG/N/10/ARG/3, G/SG/N/11/ARG/3, G/SG/N/8/ARG/4/Suppl.1, G/SG/N/10/ARG/3/Suppl.1.

<sup>35</sup> See Resolution No. 348/2001 in Exhibit CHL-2 and G/SG/N/8/ARG/4.

<sup>36</sup> See Argentina's response to question No. 9 of the Panel ("*At the time of the investigation and the time of adoption of the safeguard measure, what was the tariff rate applied to imports of preserved peaches from Chile? At the same times, what were the tariff and countervailing duties applied to imports of preserved peaches from the various member States of the European Communities?*"), footnotes 52 and 53 to Chile's first written submission and paragraphs 59 to 60 of Chile's rebuttal.

<sup>37</sup> See Argentina and Chile's response to question No. 10 of the Panel ("*In 1996, Argentina applied countervailing measures to imports of preserved peaches from Greece. Are these measures still in place? If so, have they remained at the same level?*").

### III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

#### 3.1 Chile requests the Panel:

- (a) to conclude and find that the safeguards investigation and the safeguard measure are inconsistent with Article XIX:1(a) of the GATT 1994 and with Articles 2.1, 3.1, 4.1(b), 4.2(a), 4.2(b), 5.1 and 12.2 of the Agreement on Safeguards;
- (b) to conclude and find that these breaches have caused nullification and impairment of the benefits accruing to Chile under those Agreements; and
- (c) to rule on all of the claims presented in order to ensure that Argentina does not continue to violate these Agreements as it has done.<sup>38</sup>

#### 3.2 Argentina requests the Panel:

- (a) to dismiss Chile's claims and to find that Argentina complied with the obligations imposed by Article XIX:1(a) of the GATT 1994 and with Articles 2.1, 3.1, 4.1(b), 4.2(a), 4.2(b), 5.1 and 12.2 of the Agreement on Safeguards.<sup>39</sup>

**[Parties' and Third Parties' arguments in Sections IV and V deleted from this version.]**

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<sup>38</sup> See final conclusion in Chile's first written submission, page 42. See also Chile's rebuttal, paragraph 71.

<sup>39</sup> See Argentina's first written submission, paragraph 160, Argentina's rebuttal, paragraph 41 and Argentina's second oral statement, page 17.

## VI. INTERIM REVIEW

6.1 The Panel issued the draft descriptive (factual and argument) sections of its report to the parties on 24 October 2002 in accordance with Article 15.1 of the DSU. Both parties offered written comments on the draft descriptive sections on 7 November 2002. The Panel noted all these comments and amended the draft descriptive part where appropriate. The Panel issued its interim report to the parties on 21 November 2002 in accordance with Article 15.2 of the DSU. In a letter dated 28 November 2002, Argentina requested that the Panel review precise aspects of the interim report. Chile did not have any comments on the interim report. Neither of the parties requested an interim review meeting. On 5 December 2002, Chile provided written comments on Argentina's comments on the interim report, as permitted by the Panel's working procedures, in which it asked the Panel to reject all Argentina's comments and not to modify its findings. The Panel carefully reviewed the arguments made, and addresses them below, in accordance with Article 15.3 of the DSU.<sup>455</sup>

6.2 Argentina commented on paragraphs 7.44 to 7.82 of the interim report<sup>456</sup> and requested that the Panel amend its finding regarding the increase in imports in paragraph 7.82. Argentina argued that the most significant analysis of the trend in imports should be the analysis covering the most recent period. It cited in support passages from Appellate Body reports which we quoted at paragraphs 7.51, 7.62 and 7.64 of our report. Chile replied that Argentina had not rebutted the Panel's findings in paragraphs 7.54, 7.55 and 7.64, and that the passage quoted at paragraph 7.62 of this report had to be read in conjunction with the passage quoted at paragraph 7.64. The Panel considers that it has dealt sufficiently with Argentina's argument in paragraphs 7.52 to 7.54. Moreover, the passage quoted in paragraph 7.64 itself explains that the most recent data should not be considered in isolation. The Panel has explained in paragraphs 7.65 to 7.67 why it believes that the competent authorities isolated the most recent data.

6.3 Argentina argued that the competent authorities could not have acted wrongly when they found an increase in absolute terms and acknowledged the earlier decrease in imports and sensitivity of the figures for the base year, as noted by the Panel in paragraphs 7.56, 7.58 and 7.61, given that the investigating authority was empowered to evaluate all this information within its sphere of competence. Chile replied that it was insufficient to acknowledge facts without explaining them adequately. The Panel considers that it explained in paragraph 7.61 why it was insufficient for the competent authorities merely to acknowledge these facts.

6.4 Argentina and Chile applied their respective comments above to the analysis of imports in relative terms. The Panel considers that, to the extent that some of the referenced paragraphs in the report apply to that analysis, the Panel's above discussion also applies to these comments. For all of the above reasons, the Panel declines to amend the paragraphs on which Argentina commented or its finding in paragraph 7.82.

6.5 Argentina commented on paragraphs 7.97 to 7.99 on evaluation of capacity utilization and requested that the Panel amend its finding in paragraph 7.99. Argentina argued that the Panel established an artificial distinction between what is considered in an investigation and the concept of evaluation under Article 4.2(a). It argued that the investigation of installed capacity was sufficient to constitute an evaluation as a formal matter, even if it was not specifically mentioned in the joint opinion of the CNCE directors who voted in favour of the measure. It argued that the outcome of the investigation may have led the CNCE to give more or less weight to capacity utilization in its evaluation of the situation of the domestic industry and that, in making an adverse finding, the Panel

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<sup>455</sup> Section VI of this Report entitled "Interim Review" therefore forms part of the findings of the final panel report, in accordance with Article 15.3 of the DSU.

<sup>456</sup> Paragraph numbers in the interim report were identical to those in this final report.

was substituting itself for the CNCE. Furthermore, the technical report was available to the CNCE directors when they reached their decision regarding the situation of the industry. Chile replied that Article 4.2(a) requires that the competent authorities do more than conduct an investigation and record the results, but rather evaluate and analyze the results as well as provide a reasoned and adequate explanation as to how they support their determination. Chile said that there was no evaluation of capacity utilization at all by the CNCE directors nor any explicit establishment of this factor so as to support the determination of threat of serious injury. Chile argued that Argentina had indicated in its first written submission and its answer to a question posed by the Panel that the ones that should evaluate and analyse the information compiled in a technical report were not the investigating authorities but the CNCE Directors, that is to say, the ones making the various determinations.

6.6 The Panel observes that in paragraph 7.4 of its report it noted Argentina's own explanation of the technical report, which it had provided in response to questions 1 to 3 posed by the Panel. That explanation was that the "technical report contains all of the objective data and information gathered during the investigation". The Panel noted in paragraph 7.5 that the competent authorities' operative conclusion and the supporting reasoning appeared in the joint opinion. For this reason, in accordance with its approach set out in paragraph 7.6, the Panel looked first at the joint opinion for evaluation of all relevant factors, as supplemented by the data contained in the technical report. The Panel noted in paragraph 7.96 that the competent authorities have a duty under Article 4.2(a) to evaluate, at a minimum, each of the factors listed in that paragraph, and in paragraph 7.93 it recalled the appropriate standard of review. The Panel explained in paragraph 7.98 that it saw nothing on the record that showed that the competent authorities conducted an evaluation of this factor as a formal matter. The Panel agrees with Argentina, in principle, that the outcome of the investigation may have led the CNCE to give more or less weight to capacity utilization in its evaluation of the situation of the domestic industry. However, in this case, the CNCE directors made no comment on the rate of capacity utilization itself, not even to say that they considered it irrelevant. The technical team made no comment on its own account, but only reported what the applicant had said – which was not borne out by the 2000 figure estimated by the technical team itself. As a result, the Panel cannot glean any idea as to what weight the competent authorities gave to the data which had been collected on capacity utilization nor, in fact, whether they turned their minds to it at all. If the Panel cannot be sure that the competent authorities even thought about the meaning of the data, it cannot find that there was an evaluation of this factor. If there was no evaluation, there is no need to continue and ask whether the competent authorities evaluated the bearing of capacity utilization on the situation of the domestic industry, nor whether the competent authorities provided a reasoned and adequate explanation as to how the facts relating to capacity utilization supported their determination of a threat of serious injury. Therefore, the Panel declines to amend its finding in paragraph 7.99. However, the Panel has added a footnote to paragraph 7.4 to show that the description of the contents of the technical report was provided by Argentina. The Panel does accept that its reference in paragraph 7.98, fourth sentence, to the investigation under Article 3.1 would be clearer if it were as specific as the parts of the investigation which it describes in the preceding three sentences, and it has therefore amended the fourth sentence of paragraph 7.98 accordingly. The Panel has also corrected the tense of the verb "refer" in paragraph 7.99 to be consistent with the rest of the section, and made a grammatical change in paragraph 7.101.

6.7 Argentina commented on paragraphs 7.102 to 7.117 and requested that the Panel amend its finding in paragraph 7.117 relating to a reasoned and adequate conclusion as to the existence of a threat of serious injury. Argentina argued that the nature of the competent authorities' explanation was not affected by any failure on their part to take into consideration the bad Greek harvest. It argued that, in making an adverse finding on this ground, the Panel had assumed the function of the investigating authority, since the latter was empowered to consider all the relevant data before it and to take a decision on the basis of an evaluation of the information, within its sphere of competence. Chile replied that neither it nor the Panel had disputed the powers of the CNCE but rather the question had been whether the CNCE had exercised its powers in a manner consistent with Article 4.2(a). Chile argued that the Panel had properly applied the appropriate standard of review, which it quoted at

paragraph 7.103, and had not conducted a *de novo* examination of the evidence nor substituted its own conclusions for those of the CNCE.

6.8 The Panel stated the appropriate standard of review in paragraph 7.103 which prohibits it from substituting its own conclusions for those of the competent authorities but, at the same time, obliges it to examine critically the competent authorities' explanation, in depth, and in the light of the facts before it. The Panel explained throughout paragraphs 7.103 to 7.117 why it considered that the competent authorities' explanation was not reasoned or adequate. The Panel noted that an alternative explanation was plausible, but never adopted that explanation, as it specifically noted in paragraph 7.117. The Panel therefore declines to amend the paragraphs on which Argentina commented or its finding in paragraph 7.117.

6.9 Argentina commented on paragraphs 7.118 to 7.124 and requested that the Panel amend its finding in paragraph 7.124 concerning the requirement that a threat of serious injury be "clearly imminent". Argentina concurred with the statement of the Appellate Body cited by the Panel in paragraph 7.120 regarding what should be understood by the words "clearly imminent" in defining a threat of serious injury. However, it recalled that, according to the same statement, a threat of serious injury necessarily implies that serious injury has not yet occurred, that it is an event which will materialize in the future and that its materialization "cannot, in fact, be assured with certainty". Argentina argued that the competent authorities satisfied this test based on the capacity of imports to cause serious injury, taking into account the specific characteristics of the threat. Argentina argued that the Panel did not properly take into account the competent authorities' findings regarding the capacity of the imports in the final stage of the period of analysis. Argentina argued that failure to take account of those circumstances would restrict the very notion of threat to such an extent that it would become almost impossible in practice to ascertain the existence of such a threat. Chile replied that Argentina's reliance on the Appellate Body statement was partial and omitted essential elements in the definition and concept of a threat of serious injury, which the Panel has quoted in paragraph 7.120.

6.10 The Panel agrees with Argentina that a threat of serious injury cannot be assured with certainty. However, it has quoted in paragraph 7.120 considerations relevant to the requisite degree of likelihood and imminence of serious injury, as a factual matter, in order for it to constitute a threat in accordance with Article 4.1(b). The Panel has explained in paragraphs 7.121 and 7.122 why it finds that the competent authorities did not show that serious injury was likely or imminent as required as a factual matter, and why it was insufficient to rely only on the behaviour of imports at the final stage of the period of analysis. The Panel has clarified the language in paragraph 7.122 slightly but, for the reasons given, declines to amend its finding in paragraph 7.124.

6.11 Argentina disagreed with the Panel's comment in paragraph 7.123 that a statement which Argentina had quoted was at odds with the definition of threat of serious injury in Article 4.1(b). Argentina argued that the statement which it had quoted did, in fact, refer to a threat of serious injury, and it pointed out that this view was supported by the heading of the section of the report from which the quote was taken, and a reference in a footnote. Chile replied that the Panel had not referred to the whole section of that report but only to one statement which did not refer to a threat of serious injury. The analysis in the rest of that section showed that the minimum requirement for a safeguard measure was the existence of a threat that complied with the definition in Article 4.1(b), which Argentina had failed to satisfy by not showing that serious injury to the domestic industry was clearly imminent.

6.12 The Panel accepts that the statement raised by Argentina which is quoted in paragraph 7.123 could refer to threat of serious injury, as defined, but only to the extent explained in the following sentence of the report from which Argentina quoted, i.e. only to the extent that the serious injury is clearly imminent. This does not alter the Panel's dismissal of its relevance to this case. If one were to argue that the statement meant that serious injury which had not yet occurred constituted a threat of serious injury even if it were not clearly imminent, that would be at odds with the definition in

Article 4.1(b). If one were to argue that it somehow purported to lower the standard established by the words "clearly imminent", this would be unsupported by the terms and context of that statement. The Panel has therefore amended the second and third sentences of paragraph 7.123 without modifying its dismissal of the argument, nor its finding in the following paragraph. The Panel has also made a grammatical change in paragraph 7.122.

## **VII. FINDINGS**

### **A. PRELIMINARY MATTERS**

#### **1. Measure at issue**

7.1 The measure at issue in these proceedings is Resolution No. 348/2001 of the Argentine Ministry of Economy, dated 6 August 2001, by which Argentina imposed a definitive safeguard measure on imports of peaches, preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water, coming under MCN tariff codes 2008.70.10 and 2008.70.90 ("preserved peaches"), in the form of minimum specific duties for three years effective as of 19 January 2001 (the "preserved peaches measure").<sup>457</sup> The minimum specific duty per kilogram net was set at US\$0.50 in the first year, US\$0.45 in the second year and is US\$0.40 in the third year. The preserved peaches measure applies to imports from all countries, including Members of the World Trade Organization (the "WTO"), other than MERCOSUR States Parties and South Africa.

#### **2. Relevant documents**

7.2 The preserved peaches measure recites the conclusion of the National Foreign Trade Commission (the "CNCE") set out in Record No. 781 of 2 July 2001. That Record of two pages contains the minutes of a meeting of the Board of Directors of the CNCE which was convened to rule on an application for a safeguard measure on preserved peaches. It contains the conclusions of each of the directors on whether the conditions justifying the application of a safeguard measure had been met. It shows that two directors, including the Chairperson, concluded that they had been met, whilst the other two directors concluded that they had not. In the case of a tied vote, the Chairperson's vote is decisive and, accordingly, the conclusion of the Board of Directors was that the conditions justifying the application of a safeguard measure had been met. This was the conclusion forwarded to the Ministry of Economy, which is recited in the preserved peaches measure.

7.3 The Annex to Record No. 781 sets out the written opinions or votes of the CNCE directors. There is a joint opinion by the two directors who voted in favour of the measure (the "joint opinion") and a separate opinion by each of the directors who voted against. The joint opinion explains the reasoning of the two directors who voted in favour and contains their conclusion, which became the conclusion of the Board of Directors.

7.4 The directors had prior access to the investigation file and to the technical report prepared by the technical team prior to the final determination (ITDF No. 08/01). The technical report of 95 pages plus three annexes including methodological notes and statistical tables (the "technical report"), is in turn attached to the Annex to Record No. 781. The technical report contains all of the objective data and information gathered during the investigation.<sup>458</sup>

7.5 In order to examine this matter, the Panel must consider the competent authorities' findings and reasoned conclusions on pertinent issues of fact and law, which must appear in a published report.<sup>459</sup> Argentina argues that the report published in the Annex to Record No. 781 and the technical

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<sup>457</sup> Reproduced in full in Exhibit CHL-2.

<sup>458</sup> See Argentina's response to questions Nos. 1 to 3 of the Panel.

<sup>459</sup> Article 3.1 of the Agreement on Safeguards.

report contain the relevant findings and conclusions of fact and law.<sup>460</sup> Chile does not agree that Argentina "published" a report in accordance with Article 3.1 of the Safeguards Agreement but, for the purposes of this case, it takes the file of the investigation to correspond to that published report.<sup>461</sup> It is clear from the record that the operative conclusion – that the requirements justifying the application of the preserved peaches measure had been met – and the supporting reasoning, appear in the joint opinion, which can be found in the Annex to Record No. 781. All directors, including those who wrote the joint opinion, had prior access to the technical report and the file of the investigation. Their opinions are based on the technical report.

7.6 Therefore, the Panel will assess the consistency of the preserved peaches measure and the preceding investigation with Article XIX of GATT 1994 and the Agreement on Safeguards on the basis, in the first instance, of the joint opinion in Annex to Record No. 781, as supplemented by the information in the technical report, to which we shall collectively refer as "the competent authorities' report".<sup>462</sup> We also note that the file of the investigation was available to the directors when they made their determination and can, in principle, be relevant to our assessment.<sup>463</sup>

### **3. Standard of review**

7.7 The Panel's function, as established by Article 11 of the DSU, dictates the appropriate standard of review by the Panel. Article 11 requires the Panel 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. The Panel's duty to make an objective assessment of the facts prohibits it from engaging in a *de novo* review of the preserved peaches investigation but also from showing total deference to the findings of the Argentine authorities.

### **4. Burden of proof**

7.8 The Panel will follow consistent practice in relation to the burden of proof, according to which the party who asserts a fact, or the affirmative of a particular claim or defence, whether the complainant or the respondent, bears the burden of proof of that fact, or the affirmative of that claim or defence. If that party adduces evidence sufficient to raise a presumption that what is asserted is true, the burden then shifts to the other party, who will fail unless it adduces sufficient evidence to rebut the presumption.<sup>464</sup>

### **5. Order of the Panel's analysis**

7.9 Chile makes seven principal claims. It begins with the circumstance of unforeseen developments and continues with the three conditions that make up the legal basis of a safeguard measure, namely increase in imports, threat of serious injury and causation. It makes other claims under Articles 3, 5.1 and 12.2 of the Agreement on Safeguards as well. This is an appropriate order which both parties' submissions have basically followed. The Panel will therefore analyse the claims in this order.

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<sup>460</sup> See Argentina's first written submission, paragraph 139.

<sup>461</sup> See Chile's first written submission, footnote 55.

<sup>462</sup> The competent authorities' report is reproduced in Exhibit CHL-1.

<sup>463</sup> See Argentina's first written submission, paragraph 138 and its first oral statement, paragraph 87 and Chile's response to question No. 1 of the Panel for the parties' views on the relevant documentation.

<sup>464</sup> See Appellate Body Report in *US – Wool Shirts and Blouses*, p. 14; DSR 1997:I, at p. 337.

B. CLAIMS

1. Unforeseen developments

7.10 Chile claims that the preserved peaches measure is inconsistent with Article XIX:1(a) of GATT 1994 and Article 3.1 of the Agreement on Safeguards because the competent authorities did not make a prior finding nor demonstrate in their report, as a preliminary matter of fact, the existence of unforeseen developments.<sup>465</sup> Argentina replies that the competent authorities' report did establish and demonstrate the existence of unforeseen developments, in accordance with these obligations.<sup>466</sup>

7.11 We will begin by considering Article XIX:1(a), which provides as follows:

"If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."

7.12 This provision and the Agreement on Safeguards are to be applied cumulatively, in view of the fact that Article 1 of the Agreement on Safeguards states that the purpose of that agreement is to establish "rules for the application of safeguard measures which shall be understood to mean 'those measures provided for in Article XIX of GATT 1994'", and Article 11.1(a) prohibits certain action "unless such action conforms with the provisions of that Article applied in accordance with this Agreement". This interpretation is confirmed by various reports of panels and the Appellate Body.<sup>467</sup> The parties to this dispute have proceeded on the basis of that interpretation. Therefore, in order to apply a safeguard measure, Members' competent authorities must, among other things, demonstrate as a matter of fact the existence of unforeseen developments.<sup>468</sup>

7.13 The Panel must assess whether Argentina's competent authorities "demonstrated as a matter of fact" the existence of unforeseen developments. The question arises as to when and where that demonstration must take place. Given that this is a prerequisite for the application of a safeguard measure, its existence cannot be demonstrated after the measure is applied. This was the approach of the Appellate Body in *US – Lamb*:

"[W]e note that the text of Article XIX provides no express guidance on this issue. However, as the existence of unforeseen developments is a prerequisite that must be demonstrated, as we have stated, 'in order for a safeguard measure to be applied'<sup>469</sup> consistently with Article XIX of the GATT 1994, it follows that this demonstration

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<sup>465</sup> See Chile's first written submission, paragraph 4.1.

<sup>466</sup> See Argentina's first written submission, paragraphs 30 and 31.

<sup>467</sup> Appellate Body Reports in *Argentina – Footwear (EC)*, paragraph 92; *Korea – Dairy*, paragraph 85; *US – Lamb*, paragraph 71; and Panel Reports in *US – Line Pipe*, paragraph 7.295 and *Chile – Price Band System*, paragraph 7.134.

<sup>468</sup> The parties' arguments as to whether the competent authorities' published report contained a finding and a reasoned and adequate explanation of how the facts investigated support the conclusion relate to the claim under Article 3.1 of the Agreement on Safeguards. Without expressing a view on whether Article XIX:1(a) itself requires a reasoned and adequate explanation of the existence of unforeseen developments, the Panel understands that the substance of many of those arguments relates to the demonstration required under Article XIX:1(a) of GATT 1994 as well, so that they should also be considered here.

<sup>469</sup> Appellate Body Report in *Korea – Dairy*, paragraph 85; see also, Appellate Body Report, *Argentina – Footwear (EC)*, paragraph 92.

must be made *before* the safeguard measure is applied. Otherwise, the legal basis for the measure is flawed. (...) In our view, the logical connection between the 'conditions' identified in the second clause of Article XIX:1(a) and the 'circumstances' outlined in the first clause of that provision dictates that the demonstration of the existence of these circumstances must also feature in the same report of the competent authorities. Any other approach would sever the 'logical connection' between these two clauses, and would also leave vague and uncertain how compliance with the first clause of Article XIX:1(a) would be fulfilled."<sup>470</sup>

7.14 We will therefore look for the demonstration of the existence of unforeseen developments in the competent authorities' report which the CNCE made before the application of the preserved peaches measure.

7.15 Chile alleges that there is no mention, even indirectly, of Article XIX:1(a) of GATT 1994 or its prior requirement of unforeseen developments in the competent authorities' report, including the technical report.<sup>471</sup> Argentina denies this claim, although it does not dispute that the report makes no express reference to "the result of unforeseen developments".

7.16 Both parties presented argument in their first written submissions which proceeded on the basis that the unforeseen developments in this case, if there had been any, comprised or included an increase in imports.<sup>472</sup> Chile argued that the competent authorities identified the unforeseen developments with the increase in imports.<sup>473</sup>

7.17 It is important to note that Article XIX:1(a) refers to "imports in such increased quantities and under such conditions" as to cause or threaten serious injury as a result of "unforeseen developments" and the effect of obligations. The link between these elements, according to which one has certain effects "as a result" of the other, means that they must be two distinct things. This is consistent with the approach of the Appellate Body in its reports in *Argentina – Footwear (EC)* and *Korea – Dairy* where it referred to a "logical connection" between these elements:

"In this sense, we believe that there is a logical connection between the circumstances described in the first clause – 'as a result of unforeseen developments and of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions ...' – and the conditions set forth in the second clause of Article XIX:1(a) for the imposition of a safeguard measure."<sup>474</sup>

7.18 The text of Article XIX:1(a) cannot support an interpretation that would equate increased quantities of imports with unforeseen developments.

7.19 Argentina argued that three factors constituted unforeseen developments: (a) increased production as a result of an exceptional Greek harvest; (b) substantial increase in world stocks; and (c) a downward price trend.<sup>475</sup> Argentina argues that the competent authorities' report contains a finding and demonstration of the existence of unforeseen developments in the following passages:<sup>476</sup>

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<sup>470</sup> See Appellate Body Report in *US – Lamb*, paragraph 72.

<sup>471</sup> See Chile's first written submission, paragraph 4.1.

<sup>472</sup> See, for example, Chile's first written submission, paragraphs 4.13, 4.16 and 4.85 and its first oral statement, paragraphs 10, 13 and 14, and Argentina's first written submission, paragraph 33.

<sup>473</sup> See Chile's rebuttal, paragraph 7.

<sup>474</sup> See Appellate Body Reports in *Argentina – Footwear (EC)*, paragraph 92 and *Korea – Dairy*, paragraph 85, quoted with approval in *US – Lamb*, paragraph 72.

<sup>475</sup> See Argentina's rebuttal, paragraph 9.

<sup>476</sup> See Argentina's response to questions Nos. 5 and 28 of the Panel and its rebuttal, paragraphs 10 to 12.

- In the joint opinion, in the section headed "Conditions of competition":

" ... the significant increase in world production in 1998, 1999 and 2000 (more than 16 per cent) was concentrated in the northern hemisphere, and was essentially due to the sharp increase in production in the EU during the 1999-2000 season (50 per cent higher than in the previous year), which, in its turn, had a definitive effect on its share in world trade (16 per cent). Similarly, there was a declining trend in prices for products from producers located in both hemispheres, but the trend was more marked in the case of the northern hemisphere ... "<sup>477</sup>
- In Part V of the technical report, in a section on the international market for preserved peaches, under the heading "Industry and international trade in the main producer countries" and the subheading "The overall framework":

"...[s]ubstantial increases in the European harvest of peaches for industrial use, due to favourable climatic conditions, enabled the European Union's output of preserved peaches to reach a record of 678,000 tons in the marketing year 1999/2000, signifying an increase of nearly 50 per cent compared with the previous year ... ", and

" ... European exports of preserved peaches amounted to 428,500 tons in 1999/2000, representing a 16 per cent increase over the previous marketing year."<sup>478</sup>
- In Part VI of the technical report, devoted to arguments put forward in the file in relation to injury and the application of a safeguard measure, statements made by the Chamber of Industrial Fruit Production of Mendoza (CAFIM) in its application for a provisional safeguard measure:

" ... world production for 1999/2000 is estimated at a world record of 1,242,616 tons, a 14 per cent increase over the previous period and nearly 8,000 tons more than the previous record for the period 1992/1993. World exports are expected to set a record of 617,900 tons, 15 per cent up on the previous year and 34,353 tons higher than the 1995/1996 record. Closing inventories will stand at 191,843 tons, 51 per cent more than at the end of the previous period" .<sup>479</sup>

7.20 The Panel observes that the only mention in these passages of the alleged development concerning an increase in world stocks<sup>480</sup> is taken from Part VI of the technical report, which begins with the following disclaimer:

"This part of the report is based on the various lines of argument presented by each of the parties. Its contents do not therefore in any way constitute the opinion of the CNCE technical team."

7.21 Argentina indicated that the information and data revealed by the investigation was evaluated and taken into account by the investigating authority in its determination<sup>481</sup>, but the Panel could not

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<sup>477</sup> See Annex to Record No. 781, Section V.A.4 headed "Conditions of competition", penultimate paragraph.

<sup>478</sup> See the technical report, page 47.

<sup>479</sup> See the technical report, Section VI, paragraphs 7 and 8 on pages 73 and 74.

<sup>480</sup> See Argentina's response to Panel Question No. 5.

find any place in the joint opinion where the competent authorities showed how they evaluated or took account of the statement regarding world stocks. Therefore, this statement regarding world stocks in Part VI of the Technical Report cannot constitute by itself a demonstration by the competent authorities. The Panel finds that there is no demonstration that world stocks were an unforeseen development as required by Article XIX:1(a) of GATT 1994.

7.22 As regards the other alleged developments, namely an increase in world production and a declining trend in world prices, these both appear in the first passage, taken from the joint opinion, which contains the conclusions and reasoning of the CNCE directors who voted in favour of the preserved peaches measure. We understand that the references in that passage to increases in world and European production are based to some extent on the other three passages, taken from the technical report, but observe that there is no reference to a downward price trend in the other passages on which Argentina relies, although it may be based on other information in the technical report. The Panel will therefore consider whether the competent authorities demonstrated in their report as a matter of fact that these two developments constituted unforeseen developments in the sense required by Article XIX:1(a) of GATT 1994.

7.23 Following the approach of the Appellate Body in *US – Lamb*<sup>482</sup>, we will first consider whether the competent authorities discussed or offered any explanation as to why the changes mentioned in these alleged developments could be regarded as "unforeseen developments" within the meaning of Article XIX:1(a) of GATT 1994. In the Panel's view, this requires, as a minimum, some discussion by the competent authorities as to why they were unforeseen at the appropriate time, and why conditions in the second clause of Article XIX:1(a) occurred "as a result" of circumstances in the first clause.

7.24 The passage in the joint opinion and the supporting passages in Part V of the technical report on which Argentina relies, and which are quoted above, make no mention of either of these issues. Nevertheless, the Panel has noted that the following paragraph of the joint opinion states that these developments had resulted ("*se han materializado*") in the entry of the investigated product from different origins in an unforeseen and unexpected way.<sup>483</sup> It indicates that the entry of the imports, or the way in which they were being imported, was unforeseen, but there is no mention that the alleged developments themselves were unforeseen. We have already observed in paragraph 7.18 that an increase in imports and the unforeseen developments must be two distinct elements. A statement that the increase in imports, or the way in which they were being imported, was unforeseen, does not constitute a demonstration as a matter of fact of the existence of unforeseen *developments*. We do not agree with the statement by the Appellate Body in *Argentina – Footwear (EC)* that "the increased quantities of imports should have been 'unforeseen' or 'unexpected'."<sup>484</sup> The text of Article XIX:1(a), together with the Appellate Body's own discussion of it and earlier conclusion regarding the logical connection between the circumstances in the first clause of Article XIX:1(a) – including unforeseen developments – and the conditions in the second clause – including an increase in imports – show that this is not a requirement for the imposition of a safeguard measure.

7.25 There is the issue of the point in time at which Article XIX:1(a) requires that developments should have been unforeseen. Chile stated that the developments should have been unforeseen by a Member at the time it incurred the relevant obligation.<sup>485</sup> In response to questions posed by the Panel,

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<sup>481</sup> See Argentina's rebuttal, paragraph 13.

<sup>482</sup> Appellate Body Report, paragraph 73.

<sup>483</sup> See Annex to Record No. 781, Section V.A.3 headed "Conditions of competition".

<sup>484</sup> See Appellate Body Report in *Argentina – Footwear (EC)*, paragraph 131 referring to paragraphs 91 to 98 of the same report.

<sup>485</sup> See Chile's first written submission, paragraph 4.11.

both parties submitted basically that developments should have been unforeseen by the negotiators at the time at which they granted the relevant concession.<sup>486</sup>

7.26 We recall that the Appellate Body in both *Argentina – Footwear (EC)* and *Korea – Dairy* quoted the following statement in the *US – Fur Felt Hats* GATT Working Party report of 1951:

"... 'unforeseen developments' should be interpreted to mean developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated."<sup>487</sup>

7.27 In its report in *Korea – Dairy*, the Appellate Body made the following finding:

"In our view, the text of Article XIX:1(a) of the GATT 1994, read in its ordinary meaning and in its context, demonstrates that safeguard measures were intended by the drafters of the GATT to be matters out of the ordinary, to be matters of urgency, to be, in short, 'emergency actions'. And, such 'emergency actions' are to be invoked only in situations when, as a result of obligations incurred under the GATT 1994, an importing Member finds itself confronted with developments it had not 'foreseen' or 'expected' when it incurred that obligation."<sup>488</sup>

7.28 We will apply this interpretation and determine whether the competent authorities assessed whether the developments which they identified were unforeseen as at the time the relevant obligation was negotiated. We emphasize that we are not now discussing the time at which the competent authorities must demonstrate the existence of unforeseen developments in order to adopt a safeguard measure.

7.29 In this case, the relevant obligations are Argentina's current tariff concessions on preserved peaches.<sup>489</sup> The parties agree that those concessions were negotiated during the Uruguay Round<sup>490</sup> but there is no mention of those negotiations in the competent authorities' report.<sup>491</sup> Neither the joint opinion nor the technical report discusses or offers any explanation why Argentina did not foresee the later developments in world production or world prices at the time of the Uruguay Round. It appears that the CNCE directors who voted in favour of the preserved peaches measure believed that the "way in which imports were entering" was "unforeseen and unexpected" from 1998, the earliest date mentioned in this section of the joint opinion, when the increases in world production and the decline in world prices began. Even if the CNCE directors had mentioned that the developments in world production and prices in 1999/2000 were unforeseen as at 1998, which they did not, this would have been four years later than the end of the Uruguay Round, which was the appropriate time as of which to assess whether developments were unforeseen in the sense of Article XIX:1(a) of GATT 1994.

7.30 The only evidence which the Panel has seen in the competent authorities' report that could be relevant to what Argentina foresaw during the Uruguay Round tends to show that these developments

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<sup>486</sup> See Chile's and Argentina's respective responses to question No. 7 of the Panel.

<sup>487</sup> See Appellate Body Reports in *Argentina – Footwear (EC)*, paragraph 96, and *Korea – Dairy*, paragraph 89, citing *US – Fur Felt Hats*, adopted 22 October 1951.

<sup>488</sup> See Appellate Body Report in *Korea – Dairy*, paragraph 86.

<sup>489</sup> Argentina's binding of 35 per cent on preserved peaches appears in the first note to Section I-A of its GATT Schedule of Concessions, dated 15 April 1994.

<sup>490</sup> See Chile response to question No. 7 of the Panel; Argentina's second oral statement, paragraphs 15, 18 and 19; Argentina's response to questions Nos. 7 and 31 of the Panel and question No. 2 of Chile.

<sup>491</sup> There is only a mention of the bound tariff rate in the Annex to Record No. 781, Section V.A.1 headed "Evolution of imports". There is no mention of the market access expectations of the Argentine negotiators or the particular content surrounding the Uruguay Round, to which Argentina referred in paragraphs 15 to 19 of its second oral statement.

were not unforeseen. The supporting passage from Part VI of the technical report, on which Argentina relies, is a statement of an interested party about the volume of world production of preserved peaches in 1999/2000. It compares the volume with the volume of world production in 1992/1993 – which was a season during the Uruguay Round – and shows that the volume in 1999/2000 was less than one per cent higher.<sup>492</sup> This would normally indicate that a level of production such as the one that occurred in 1999/2000 could and should have been foreseen by the Argentine negotiators at least before the end of the Uruguay Round. Argentina argued that its negotiators could not reasonably have been expected to foresee that abnormal circumstances, such as the record world production in 1992/1993, would become the rule rather than the exception.<sup>493</sup> The competent authorities' report contains no finding or evidence that these abnormal circumstances did become the rule. The Panel asked Argentina why its negotiators in the Uruguay Round did not expect such fluctuations in the future. Argentina replied that the Agreement on Safeguards applies specifically to situations of injury under fair trading conditions which, owing to their exceptional nature, are difficult to predict.<sup>494</sup> Whilst this may be true, given that in this case the alleged unforeseen developments are fluctuations in production, stocks and prices of a commodity, we would not expect that tariff negotiators could not and should not foresee them.

7.31 Argentina drew the Panel's attention to the incorporation in Argentine law of WTO rules and stressed that the competent authorities stated from the very beginning of their analysis that the investigation would be conducted in accordance with the regulations laid down in the framework of Article XIX of GATT 1994.<sup>495</sup> The Panel notes that the former refers to the creation of legal obligations in Argentina's domestic legal order and the latter is a statement of principle. Neither amounts to a demonstration of the existence of unforeseen developments in the preserved peaches case.

7.32 The joint opinion does refer to "unforeseen developments" as such in its final conclusion, which is basically reproduced in Record No. 781 and Resolution No. 348/2001. It reads as follows:

"Having concluded that the domestic industry is facing a threat of serious injury within the meaning of Article 4 of the Agreement on Safeguards and that *this is occurring in a context of unforeseen developments*, Dr Lidia Elena M. de Di Vico and Dr Héctor F. Arese find that the requirements under that Agreement justifying the application of a safeguard measure have been met. [emphasis added]"

7.33 A mere phrase in a conclusion, without supporting analysis of the existence of unforeseen developments, is not a substitute for a demonstration of fact. The failure of the competent authorities to demonstrate that certain alleged developments were unforeseen in the foregoing section of their report is not cured by the concluding phrase.

7.34 The Panel has observed that this phrase refers to a "context" ("*contexto*") of unforeseen developments unlike Article XIX:1(a) of GATT 1994 which refers to their "result" ("*consecuencia*"). Argentina argues that the introductory reference to the Agreement on Safeguards and Article XIX of GATT 1994 on page 1 of the Annex to Record No. 781 shows that, when the directors wrote "context", they meant the same thing as "result".<sup>496</sup> Chile does not agree, and argues that the use of the word "context" shows that the competent authorities' conclusion is inconsistent with

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<sup>492</sup> See Argentina's response to question No. 6 of the Panel, citing information submitted by an interested party and contained in the technical report that estimated world production in 1999/2000 at a record 1,242,616 tons. According to Argentina, this represented a 14 per cent increase over the previous period and almost 8,000 tons more than the previous record in 1992/1993. From this we can calculate that the increase of the 1999/2000 estimate over 1992/1993 was approximately 0.64 per cent.

<sup>493</sup> See Argentina's response to questions Nos. 7 and 8 of the Panel.

<sup>494</sup> See Argentina's response to question No. 31 of the Panel.

<sup>495</sup> See Argentina's first written submission, paragraph 34, Argentina's first oral statement, paragraph 4.

<sup>496</sup> See Argentina's second oral statement, paragraphs 8 and 9.

Article XIX:1(a).<sup>497</sup> We note that the words "context" and "result" have different meanings in the original Spanish (and in English and French), the key difference being that the word "result" denotes a causal relationship, which the word "context" does not. However, in view of our reasoning in the previous paragraphs, it is unnecessary to form a final view on this argument.

7.35 For all these reasons, the Panel finds that the competent authorities' report does not demonstrate as a matter of fact the existence of unforeseen developments as required by Article XIX:1(a) of GATT 1994.

7.36 Chile also claimed in its first written submission that the facts before the competent authorities showed that the alleged unforeseen developments were not unforeseen.<sup>498</sup> The basis of that claim was that the increase in imports (not the unforeseen developments) was a recovery that was expected after the "interruption" in 1997 and 1998. In view of the Panel's finding<sup>499</sup>, and Chile's own later argument<sup>500</sup>, that increased quantities of imports cannot be equated with unforeseen developments, it is unnecessary for the Panel to consider this claim.

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<sup>497</sup> See Chile's rebuttal, paragraph 10.

<sup>498</sup> See Chile's first written submission, paragraphs 4.10 to 4.13.

<sup>499</sup> See paragraph 7.18 above.

<sup>500</sup> See Chile's rebuttal, paragraph 7.

## 2. Increase in imports

7.37 Chile claims that Argentina acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards because the competent authorities did not demonstrate during the period of investigation (1996-2000) that preserved peaches were being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.<sup>501</sup> It argues that the increases in imports in both absolute and relative terms correspond to a foreseen and expected recovery by those imports of their historical levels that were severely disrupted in 1997 and 1998 by an isolated and unexpected climatic situation which affected the production and export capacity of Greece, the leading world producer and exporter of preserved peaches.<sup>502</sup> Argentina denies the claim and submits that the increase was both absolute and relative.<sup>503</sup> It further argues that what the Argentine industry was facing was not a hypothetical recovery of imports to their historical levels but "unforeseen developments".<sup>504</sup>

### (a) Periods of analysis

7.38 The competent authorities' report does not identify an "investigation period" as such.<sup>505</sup> When asked by the Panel to confirm the dates of the investigation period, Argentina replied that "The gathering of import data covers the period 1996-2000."<sup>506</sup> The Panel asked Argentina to explain which were the criteria that the competent authorities used in order to select the period of time for their analysis of increased imports in absolute and relative terms. Argentina did not respond to this part of that question.<sup>507</sup>

7.39 The technical report and joint opinion show that data was collected and considered on volume of imports in *absolute* terms for *five* years from 1996 to 2000, and in some respects six years, from 1995. Data was collected and considered on volume of imports *relative* to domestic production for *four* years from 1997 to 2000. Argentina explained that, under its legislation, one of the requirements for applications to initiate investigations into safeguard measures is the submission of import data "for the last five full years to substantiate the significant increase in absolute or relative terms of the product being imported".<sup>508</sup> Argentina emphasizes that this obligation binds applicants but not the competent authority.<sup>509</sup>

7.40 The technical report and joint opinion show that data was collected and considered for the domestic industry for four years from 1997 to 2000, although there is also mention of certain features of the industry during prior years.

7.41 We note that Argentina has used the term "period of analysis" in its rebuttal submission. For the purposes of our examination, we will use that term as well and simply note that the period for which the competent authorities analysed data was the five year period 1996-2000 in absolute terms, and 1997-2000 in relative terms.

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<sup>501</sup> See Chile's first written submission, paragraph 4.15.

<sup>502</sup> See Chile's rebuttal, paragraph 23.

<sup>503</sup> See Argentina's first written submission, paragraph 61

<sup>504</sup> See Argentina's rebuttal, paragraphs 18 and 19.

<sup>505</sup> See, for example, the absence of a reference to this period in the information summary on page (i) of the technical report. However, on two occasions the investigating authorities refer to the "period considered" and the "period investigated" as 1997-2000 in the section on the domestic market (see page 34 of the technical report).

<sup>506</sup> See Argentina's response to question No. 12 of the Panel.

<sup>507</sup> See Argentina's response to question No. 14 of the Panel.

<sup>508</sup> See Decree No. 1059/96, Annex 1, paragraph (e) reproduced in full in Exhibit CHL-5, explained by Argentina in its first written submission, paragraph 58.

<sup>509</sup> See Argentina's first written submission, paragraph 58.

(b) Competent authorities' determination

7.42 The relevant section of the joint opinion reads as follows:

"Evolution of imports

...

In the period 1996/2000, Argentine imports of preserved peaches evolved in a way that needs to be analysed against a background of various factors, including climatic conditions, countervailing measures in force in Argentina, and the structural patterns of world production.<sup>510</sup> Thus, a comparison of the beginning and end of the period in question, without prejudice to the analysis of the years in between, shows that imports in tons in 2000 represented 85 per cent of the volume imported in 1996, but measured in dollars f.o.b. they only came to 64 per cent of the value for that year.

The year 1996 shows the greatest volume of imports with a figure of over 14,000 tons, equivalent to 10 million dollars f.o.b, which gives us a general average price for all origins of 0.699 dollars per kilogram. Greece was the leading exporter to Argentina during this period, representing 42 per cent of the total volume and approximately 36 per cent of the value, with an average price of 0.596 dollars f.o.b. per kilogram, within a range of 0.70 to 0.46 US\$/kg.

In 1997 and 1998 total Argentine imports<sup>511</sup> fell by 55 per cent and 45 per cent respectively, owing to severe climatic conditions that affected world production and, consequently, trade in the product in question. An examination of average f.o.b. prices shows that they increased in 1997, as did the price of the main exporter, Greece. In 1998 these prices continued to rise on average, though to a lesser extent. In the case of Greece, however, they fell by some 15 per cent to a level of 0.594US\$/kg.

An analysis of the most recent period shows that in 1999, total imports grew sharply (by more than 100 per cent), a situation which recurred in 2000 with a growth of 68 per cent. Imports for 2000 exceeded 12,000 tons for an f.o.b. dollar value of approximately 6,400,000. In this last year imports from Greece, the leading exporter, came to 60 per cent of the total imports.

In 1999 the average price fell to 0.625 US\$/kg. and in 2000 to US\$0.525/kg. f.o.b. The determining factor of this fall was the prices of the main exporters, that is to say, the European Union and, more specifically, Greece, whose average f.o.b. price in 2000 was 0.412 US\$/kg.

The prices of the imports in the domestic market have generally remained below the domestic price, despite the existence of tariffs equivalent to Argentina's bound ceiling of 35 per cent and of countervailing duties for Greece.

According to the figures supplied by CAFIM for the ratio of imports to domestic production for the most recent period, imports represented 11 per cent in 1999 and 19 per cent in 2000.

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<sup>510</sup> [Original footnote] Imports for the period 1996/2000 were also analysed in the light of Decree 1059/96.

<sup>511</sup> [Original footnote] Not including MERCOSUR.

On the basis of the survey, the Commission concludes that imports satisfy the provisions of Article 2 of the Agreement on Safeguards, insofar as there was an increase in imports in the most recent period, both in absolute terms and in relation to domestic production, at prices which justify proceeding with the analysis provided for in Article 4 of the Agreement on Safeguards."<sup>512</sup>

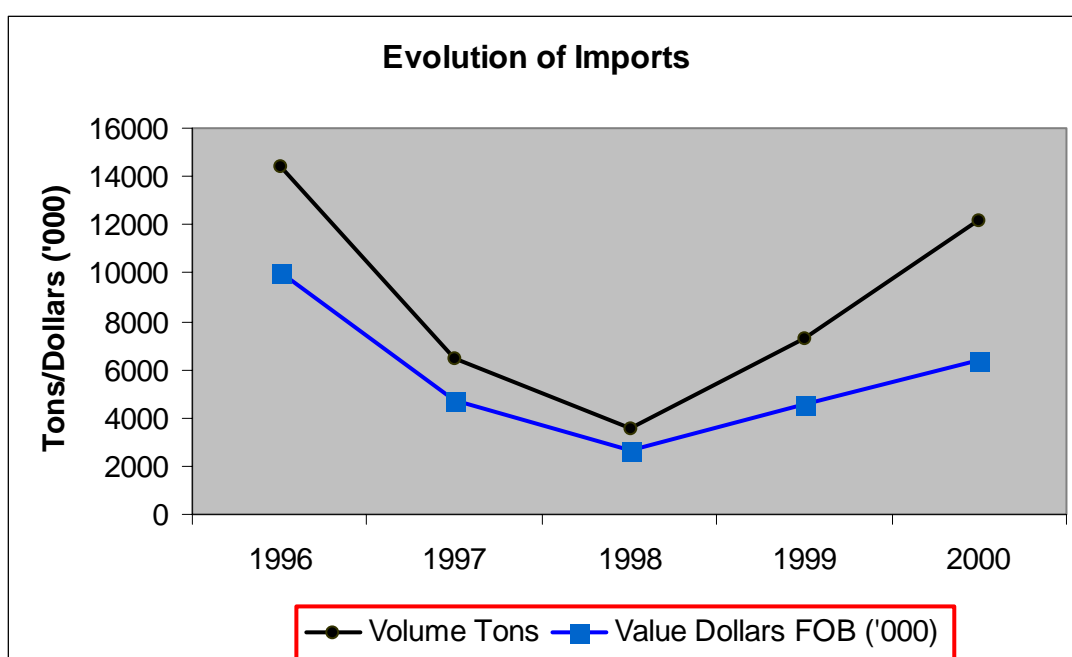
(c) Evaluation of the determination

7.43 The Panel will consider this passage in the context of the rest of the joint opinion and the technical report, in its assessment of Chile's claims. We recall the standard of review of the factual aspects of a determination of an increase in imports as formulated by the Panel in *US – Line Pipe*, following the Panel in *US – Wheat Gluten*, which we will also apply:

"[W]hether the published report on the investigation contains an adequate, reasoned and reasonable explanation of how the facts in the record before the ITC support the determination made with respect to increased imports."<sup>513</sup>

(i) Increase in imports in absolute terms

7.44 Chile claims that Argentina acted inconsistently with its obligations in respect of the finding of an increase in imports both in absolute terms *and* in relative terms. The Panel will first consider the finding regarding absolute quantities, and consider separately the finding regarding relative quantities. The data on imports in absolute terms referred to in the above passage is presented in the following graph.<sup>514</sup>



<sup>512</sup> See Annex to Record No. 781, Section V.A.1 headed "Evolution of imports".

<sup>513</sup> See Panel Report in *US – Line Pipe*, paragraph 7.194.

<sup>514</sup> This data is taken from Table 15 and accompanying graphics in the technical report. The graph includes the 1999 figure for imports in absolute terms in terms of value, which was not quoted by the directors.

7.45 The parties agree that the competent authorities used 1998 as the base year for the determination of an increase in imports.<sup>515</sup> This was the case both in terms of volume and value of imports. In making their finding, the directors took account of decreases in prices over the same period.

7.46 Accordingly, the issue for the Panel to decide is whether the competent authorities determined that there was an increase in imports in absolute terms as required by Article XIX:1(a) of GATT 1994 and Articles 2 and 4.2(a) of the Agreement on Safeguards based on the period 1998-2000.

7.47 Article XIX:1(a) GATT 1994 provides, relevantly, as follows:

"If ... any product is being imported into the territory of that Member in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products ..."

7.48 Article 2.1 of the Agreement on Safeguards provides:

"A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products."

7.49 These two provisions contain the three basic conditions making up the legal basis for a safeguard measure. The first of these is an increase in imports. Article 2.1 provides that it may be in either absolute or relative terms. Article 4.2(a) of the Agreement on Safeguards explains how the investigation should be conducted to determine whether the conditions in Article 2.1 and the second clause of Article XIX:1(a) are satisfied. It provides, relevantly:

"... the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, ..."

7.50 We begin by agreeing with Argentina that none of these provisions establish a minimum period for the investigation, nor any so-called "base period" within the investigation period on which to base a determination of an increase in imports.<sup>516</sup>

7.51 We recall that an increase in imports, in the sense required by Article 2.1 and Article XIX:1(a), was interpreted by the Appellate Body in *Argentina – Footwear (EC)* as follows:

"(...) In our view, the determination of whether the requirement of imports 'in such increased quantities' is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year – or five years ago. Again, and it bears repeating, not just *any* increased quantities of imports will suffice. There must be '*such* increased quantities' as to cause or threaten to cause serious injury to the domestic industry in order to fulfil this requirement for applying a safeguard measure. And this language in both Article 2.1 of the *Agreement on Safeguards* and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports

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<sup>515</sup> See Chile's rebuttal, paragraph 13(b) and Argentina's response to question No. 34 of the Panel.

<sup>516</sup> See Argentina's first written submission, paragraph 57.

must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'".<sup>517</sup>

7.52 The Panel agrees with Argentina that it is not required to show that imports have increased over five years and we have seen no evidence of such a requirement under Argentine law either. However, the point is that there is no fixed period of five years or any other length of time over which figures can simply be subtracted to yield an increase in imports in the sense of Article 2.1 and Article XIX:1(a). Accordingly, neither the mathematical increase in imports of preserved peaches in the last two years, nor the mathematical decrease over the whole five year period of analysis, is determinative.

7.53 Argentina refers to the passage quoted above from *Argentina – Footwear (EC)* and argues that the increase in imports identified by the directors was recent.<sup>518</sup> The directors noted that they based their analysis on "the most recent period", i.e. the last two years of the period for which data was collected and considered. We agree that the last two years of the period of analysis was the most recent period. However, we concur with the Panel in *US – Line Pipe* that the word "recent" does not imply that the analysis must focus exclusively on conditions at the very end of the period of analysis.<sup>519</sup> The directors also qualified the increase in imports in the last two years of the period of analysis as "sharp".<sup>520</sup> We do not disagree. We see no evidence that they considered whether the increase was sudden or significant.

7.54 We believe that a recent and sharp increase in imports is a necessary, but not a sufficient, condition to satisfy Article 2.1 and Article XIX:1(a). The increase is not merely the product of a quantitative analysis, it must also be qualitative. This was the approach of the Appellate Body in the passage quoted above from *Argentina – Footwear (EC)*, where it found that an increase in imports as required by Article 2.1 and Article XIX:1(a) must be recent, sudden, sharp and significant *enough*, both quantitatively and qualitatively. It is therefore not sufficient to find that an increase in imports is only recent, sudden, sharp and significant mathematically.

7.55 The qualitative analysis required was illustrated by the Appellate Body in *Argentina – Footwear (EC)* when it interpreted the requirement in Article 4.2(a) that the competent authorities evaluate the "rate and amount" of the increase in imports. They found that it meant that the competent authorities in that case should have considered the trends in imports over the period of investigation, rather than just comparing the end points, and to consider the sensitivity of their analysis to the particular end points of the investigation period used.<sup>521</sup>

7.56 In the competent authorities' report in the present dispute, the CNCE directors who voted in favour of the measure considered the rate of the increase in imports in the last two years of the period of analysis. They cited increases of 100 per cent and 68 per cent in 1999 and 2000 respectively over the previous years. They also considered the amount of the increase in imports, in both volume and value.<sup>522</sup> They noted the trends in imports over the period of analysis, and also compared the end points. The data available in the technical report, which they did not quote, shows that the end points of the period of analysis 1996-2000 revealed a decrease in imports in absolute terms by volume of 2,217 tons or 15 per cent and a decrease by f.o.b. value of US\$3,661,306 or 36 per cent.

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<sup>517</sup> See Appellate Body Report in *Argentina – Footwear (EC)*, paragraph 131.

<sup>518</sup> See Argentina's first written submission, paragraphs 57 to 59.

<sup>519</sup> See Panel Report in *US – Line Pipe*, paragraph 7.204.

<sup>520</sup> See Annex to Record No. 781, Section V.A.1 headed "Evolution of imports". A dissenting director wrote that the increase was not "sharp": see Annex to Record No. 781, Section V.B.

<sup>521</sup> See Appellate Body Report in *Argentina – Footwear (EC)*, paragraph 129.

<sup>522</sup> In fact, the amounts for 1999 were omitted, but they appear in the technical report, table 15.

7.57 The directors recognized the sensitivity of 1998 as their choice of base year for their determination of an increase in imports. They expressly acknowledged that an unusual factor – the bad harvest in the major exporting country – affected that year, which was 1998. They acknowledged that over the whole period for which they considered data there was a decrease in imports, so that they were aware that their choice of the base year decisively affected their determination as to whether there was an increase in imports at all.

7.58 However, the Panel finds no record in the joint opinion that the directors related these considerations to their determination of an increase in imports. Indeed, the report indicates that once they had acknowledged the decrease from 1996 to 2000, the trend from 1996 to 1997 and the sensitivity of the figures for 1998, they disregarded these considerations in reaching their conclusion. By contrast, the investigating authority qualified the increase in imports as a "recovery", which shows how it took account of the trends. This explanation of the qualitative significance of the increase from 1998 to 2000 does not appear in the joint opinion, and hence is lacking from the reasoning of the competent authorities that led to the imposition of the preserved peaches measure.<sup>523</sup>

7.59 The Panel asked Argentina whether it believed that the statistics for 1997 and 1998 were representative of imports or were influenced by any unusual factors and, if the latter, how the competent authorities took account of this in their determination. Argentina replied by providing statistics for 1997 and 1998 that appear in the joint opinion reproduced above.<sup>524</sup> The Panel posed a follow up question to Argentina to ask how the competent authorities took account of these statistics in their determination of an increase in imports. Argentina replied that they did so in the sense that appears in Part V of the Annex to Record No. 781, which contains the respective opinions of the directors (reproduced in relevant part above).<sup>525</sup>

7.60 The Panel finds it highly significant that the volume of imports in absolute terms declined over the period of analysis – by a seventh in terms of volume and over a third in terms of price. It is highly significant that the volume of imports in absolute terms declined over the period 1996 to 1998 by more than the increase which the competent authorities identified from 1998 to 2000, and that this was due to an unusual factor which is acknowledged on the record. This decrease and the reason for it affected the significance of the later increase, so that it was qualitatively different from an increase of the same quantity under other circumstances. Its significance may have been that of a recovery and not an increase that was significant enough for the purposes of Article 2.1 and Article XIX:1(a).

7.61 We find that the competent authorities did at least acknowledge all the facts. Having done so, they then took no further account of any of them for the purposes of their determination other than those in the last two years of the period of analysis. They did not consider how this affected qualitatively the increase in the last two years of the period of analysis. Therefore, the Panel considers that their explanation was not adequately reasoned.

7.62 Argentina referred to a statement in the Appellate Body report in *US – Lamb* that:

"[D]ata relating to the most recent past will provide competent authorities with an essential, and, usually, the most reliable, basis for a determination of a threat of serious injury. The likely state of the domestic industry in the very near future can best be gauged from data from the most recent past. Thus, we agree with the Panel

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<sup>523</sup> After the determination of an increase in imports, the joint opinion does address some qualitative issues regarding world production, which it links to imports, in the paragraphs dealing with the alleged unforeseen developments. This only relates to the period 1998-2000 and does not add anything qualitative to the analysis of the increase of imports, which the directors had already qualified as recent and sharp. See Annex to Record No. 781, Section V.A.3 headed "Conditions of competition".

<sup>524</sup> See Argentina's response to question No. 15 of the Panel.

<sup>525</sup> See Argentina's response to question No. 35 of the Panel.

that, in principle, within the period of investigation as a whole, evidence from the most recent past will provide the strongest indication of the likely future state of the domestic industry."<sup>526</sup>

7.63 We agree with Argentina that these considerations regarding the period relevant to a threat of serious injury determination also apply to an increased imports determination, for the same reasons expressed by the Panel in *US – Line Pipe*:

"In a safeguard investigation, the period of investigation for examination of the increased imports tends to be the same as that for the examination of the serious injury to the domestic industry. This contrasts with the situation in an anti-dumping or countervailing duty investigation where the period for evaluating the existence of dumping or subsidization is usually shorter than the period of investigation for a finding of material injury. We are of the view that one of the reasons behind this difference is that, as found by the Appellate Body in *Argentina – Footwear Safeguard*, "the determination of whether the requirement of imports 'in such increased quantities' is met is not a merely mathematical or technical determination." The Appellate Body noted that when it comes to a determination of increased imports 'the competent authorities are required to consider the *trends* [emphasis in original] in imports over the period of investigation'. The evaluation of trends in imports, as with the evaluation of trends in the factors relevant for determination of serious injury to the domestic industry, can only be carried out over a period of time. Therefore, we conclude that the considerations that the Appellate Body has expressed with respect to the period relevant to an injury determination also apply to an increased imports determination." [original footnotes omitted]<sup>527</sup>

7.64 We do not believe that the statement to which Argentina refers in the Appellate Body report in *US – Lamb* is authority for the proposition that the most recent data alone is sufficient for a determination. The most recent past should not be considered separately from the overall trends during the period of analysis, as the succeeding paragraph of that report explains:

"However, we believe that, although data from the most recent past has special importance, competent authorities should not consider such data in isolation from the data pertaining to the entire period of investigation. The real significance of the short-term trends in the most recent data, evident at the end of the period of investigation, may only emerge when those short-term trends are assessed in the light of the longer-term trends in the data for the whole period of investigation. If the most recent data is evaluated in isolation, the resulting picture of the domestic industry may be quite misleading. For instance, although the most recent data may indicate a decline in the domestic industry, that decline may well be a part of the normal cycle of the domestic industry rather than a precursor to clearly imminent serious injury. Likewise, a recent decline in economic performance could simply indicate that the domestic industry is returning to its normal situation after an unusually favourable period, rather than that the industry is on the verge of a precipitous decline into serious injury. Thus, we believe that, in conducting their evaluation under Article 4.2(a), competent authorities cannot rely exclusively on data from the most

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<sup>526</sup> See Appellate Body Report in *US – Lamb*, paragraph 137. We note that the Panel in *Chile – Price Band System*, paragraph 7.153, fn. 714, also considered this statement relevant to the analysis of actual import trends.

<sup>527</sup> See Panel Report in *US – Line Pipe*, paragraph 7.209.

recent past, but must assess that data in the context of the data for the entire investigative period." [original footnote omitted]<sup>528</sup>

7.65 The Appellate Body acknowledged that by evaluating the most recent data in isolation, the resulting picture of the domestic industry may be quite misleading. We believe that the same is true of the resulting picture of an increase in imports. In the present case, we believe that the analysis of the 1998-2000 data should not be considered in isolation. However, the record shows that the directors acknowledged the decrease from 1996 to 2000, the trend from 1996 to 1997, and the sensitivity of the figures for 1998, but did not evaluate the increase from 1998 to 2000 in light of those facts.

7.66 Argentina argues that the investigating authority did not isolate the data for the last two years from the whole period of investigation because:

"... the investigating authority took an investigation period (1996/2000) and detected the increased imports in a period within the investigation period (1999/2000). In other words, the investigating authority, when evaluating the data corresponding to the most recent past, clearly did not isolate that data from the data corresponding to the entire investigation period."<sup>529</sup>

7.67 In the Panel's view, the first sentence does not rebut the argument that the competent authorities isolated the data for the end of the period for which they had data from the entire period. Indeed, detecting an increase in only part of the period is synonymous with isolating the data for that part from the data corresponding to the entire period. Merely commenting on the data for the first two years without relating it to the mathematical increase in the last two does not amount to a determination of a qualitative increase either.

7.68 Argentina also mentioned that in 1996 countervailing duties were applied to peaches from the European Union which affected the flow of imports from that origin.<sup>530</sup> In the Panel's view, this cannot justify the competent authorities disregarding the imports in 1996 for three reasons. First, countervailing duties could be expected to reduce the level of imports, which would not explain why the 1996 figures were so much higher than the 1997 and 1998 figures. Second, the competent authorities had an explanation as to why the 1997 and 1998 figures were lower than 1996 – namely, because there had been a bad harvest in Greece. Third, the countervailing measure was in place at the same rates for the entire period of analysis, excepting only the first nine days of 1996.<sup>531</sup> However, there is no reason on the record that justified the competent authorities disregarding the effects of the statistics for a whole year because of the effect of those nine days. The Panel also notes that Argentina does not argue that the countervailing measure was insufficient to offset the effect of the subsidies.<sup>532</sup>

7.69 For all of the above reasons, the Panel finds that the competent authorities' determination of an increase in imports in *absolute* terms is inconsistent with Article 4.2(a) of the Agreement on Safeguards, and that they failed to determine an increase in imports in absolute terms as required by Article 2.1.

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<sup>528</sup> See Appellate Body Report in *US – Lamb*, paragraph 138.

<sup>529</sup> See Argentina's rebuttal, paragraph 22. The Panel observes that Argentina does not confirm that the period 1996 – 2000 was *the* investigation period in this case, but the Panel does not believe that this alters the situation. The period for which the competent authorities had import data in absolute terms available and which they considered was the five year period from 1996 to 2000. The competent authorities isolated the data for 1998 from the data for that entire five-year period.

<sup>530</sup> See Argentina's rebuttal, paragraph 20.

<sup>531</sup> See Argentina's response to question No. 33 of the Panel.

<sup>532</sup> See Argentina's response to question No. 55 of the Panel.

(ii) *Increase in imports in relative terms*

7.70 Our finding at paragraph 7.69 does not of itself prove that Argentina acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards, as the first condition for the application of a safeguard measure is an increase in imports in absolute *or* relative terms. In order to succeed on this claim, Chile must also show that the competent authorities failed to show an increase in imports in relative terms.

7.71 The meaning of an increase in imports in relative terms is clear from Article 2.1 of the Agreement on Safeguards which refers to "increased quantities, (...) relative to domestic production." It is clear from the joint opinion that the data cited by the competent authorities refers to relative quantities in this sense, calculated by reference to volume.

7.72 The treatment of imports relative to domestic production is particularly sparse in the competent authorities' report.<sup>533</sup> The only relevant statement in the joint opinion – apart from the conclusion that the increase satisfied Article 2 – reads as follows:

"According to the figures supplied by CAFIM for the ratio of imports to domestic production for the most recent period, imports represented 11 per cent in 1999 and 19 per cent in 2000."<sup>534</sup>

7.73 The technical report contains data on quantities of imports relative to domestic production, with sub-totals by hemisphere, for the years 1997 to 2000. There is no data on relative quantities for 1996. Argentina informed the Panel that the gathering of import data covers the period 1996-2000<sup>535</sup>, but we take it that it meant the period for which applicants had to supply data, which was five years on quantities of imports in absolute *or* relative terms and, in this case, import data was collected for five years in absolute terms only.<sup>536</sup> There are alternative figures for 2000: 18.57 per cent according to CAFIM and 21.05 per cent according to the CNCE, due to their different figures for domestic production in that year.<sup>537</sup> This explains why the directors introduced the figures with the qualification "According to the figures supplied by CAFIM".

7.74 We recall that there is no statement as to what was the investigation period. For our purposes, we need only find that the period of analysis of import quantities in relative terms was the four-year period from 1997 to 2000.

7.75 The Panel asked Argentina over what periods of time the competent authorities found an increase in imports in absolute and relative terms. Argentina replied that the period is 1999-2000.<sup>538</sup> In response to a follow-up question, Argentina indicated that the base year for the determination of an increase in imports was 1998.<sup>539</sup> Chile has proceeded on the premise that the base year was 1998.<sup>540</sup>

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<sup>533</sup> Although the competent authorities cited relative rates of increase in imports of 100 per cent in 1999 and 68 per cent in 2000, those statistics refer to the absolute quantity for one year relative to the absolute quantity for the previous year, but not quantities relative to domestic production. Before the Panel, Argentina cited a statistic for the quantity relative to domestic production for one year relative to the quantity relative to domestic production for the previous year. That is not a quantity relative to domestic production either, nor does it appear in the competent authorities' report. We do not consider those statistics in relation to the determination of an increase in imports in relative terms for these reasons. See Argentina's first written submission, paragraph 61 and its rebuttal, paragraph 62.

<sup>534</sup> See Annex to Record No. 781, Section V.A.1 headed "Evolution of imports".

<sup>535</sup> See Argentina's response to question No. 12 of the Panel.

<sup>536</sup> This appears to indicate that the applicants substantiated their application on the basis of an increase in absolute terms only.

<sup>537</sup> See Table 20 in the technical report.

<sup>538</sup> See Argentina's response to question No. 14 of the Panel.

<sup>539</sup> See Argentina's response to question No. 34 of the Panel.

It appears that these approaches focus on absolute quantities. Given that there is no reference in the joint opinion to figures for relative quantities for 1998, and no reference to figures for relative quantity for one year over another, the notion of "base year" refers, at best, to 1999, the figure for which can be subtracted from that for 2000.

7.76 There is no reasoning in the competent authorities' report as to why they determined that respective volumes of imports in relative terms of 11 per cent in 1999 and 19 per cent in 2000 constituted an increase in imports in relative terms in the sense of Article 2.1 and Article XIX:1(a). In fact, there is not an express determination of an increase in relative terms at all, although it can be deduced from the quantities for two years which are given (7.49 per cent, based on the figures supplied by CAFIM).<sup>541</sup> The only facts which the competent authorities appear to have considered are the statistics in table 20 of the technical report on imports relative to domestic production for four years, which show annual increases.

7.77 The only evidence on the record that shows how the facts supported the determination of an increase in imports in relative terms is the statement in the conclusion on evolution of imports that the increase, in both absolute and relative terms, was "in the most recent period". We refer to our findings above at paragraphs 7.53 and 7.54 that this alone does not necessarily constitute an increase in the sense of Article 2.1 and Article XIX:1(a), nor can it on the facts of this case without some additional explanation. We see no evidence that the directors considered this sudden, sharp or significant. There is no qualitative analysis and almost no quantitative analysis.

7.78 In addition, our findings above in paragraphs 7.63 to 7.68 are applicable to the determination of an increase in imports in relative terms. The data for the most recent period, 1999 and 2000, was isolated from the rest of the data, and the resulting picture of the increase in imports was quite misleading.

7.79 For these reasons, the Panel finds that the competent authorities failed to determine an increase in imports in *relative* terms as required by Article 2.1 of the Agreement on Safeguards.

7.80 Chile urged the Panel to consider data on apparent consumption of preserved peaches for the period 1994-1996 drawn from a "Sectoral Study of Canned Peaches" prepared by the CNCE in 1998 for an earlier investigation into peaches in syrup from the European Union (the "subsidies investigation").<sup>542</sup> Chile alleges that the safeguard investigators referred to the file of the subsidies investigation because it is mentioned in some statistical charts in the safeguards technical report.<sup>543</sup> Argentina does not deny that the file of the subsidies investigation may be quoted as a source in the file of the safeguard investigation and says that it was publicly available on the website of the CNCE before the safeguards investigation began. However, it denies that the safeguard investigation technical report takes account of the data from the sectoral study.<sup>544</sup>

7.81 We do not find that sectoral study relevant to our examination. It contains figures on apparent consumption and shows import quantities relative to domestic sales, not relative to domestic production. There are no figures for exports in 1996 which would allow a calculation of the quantity

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<sup>540</sup> See Chile's first written submission, paragraph 4.36.

<sup>541</sup> Argentina asserted before the Panel that the increase was in the order of 10 per cent (*see* Argentina's second oral statement, paragraph 29). The difference in the figures quoted by the directors is 8 per cent (*see* Annex to Record No. 781, Section V.A.1 headed "Evolution of imports"). These figures were rounded up from those in the technical report which show a difference of 7.49 per cent (*see* Table 20 in the technical report). The percentage can be subtracted because, according to the figures supplied by CAFIM, domestic production volume was identical in 1999 and 2000.

<sup>542</sup> See Chile's first written submission, paragraphs 4.24 to 4.26. The Sectoral Study is reproduced in Exhibit CHL-6.

<sup>543</sup> See Chile's rebuttal, paragraph 34.

<sup>544</sup> See Argentina's response to question No. 11 of the Panel.

of imports relative to domestic production for that year. Argentina has argued that the product under consideration in the sectoral study is peaches in syrup which is not the same as preserved peaches<sup>545</sup>, despite the cross-reference in two statistical charts. It also argues that its statistics cannot be compared with the preserved peaches data because they are measured in units of cans, not tons, and that differences in apparent consumption and market and marketing structures between the period 1994-1996 and 1999-2000 make the study unreliable. Chile has not dispelled the doubts raised by these arguments.

7.82 In view of our findings at paragraphs 7.69 and 7.79, we find that Argentina acted inconsistently with its obligations under Article XIX:1(a) of GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards, because the competent authorities failed to make a determination of an increase in imports, in absolute or relative terms, as required.

### **3. Threat of serious injury**

7.83 Chile claims that Argentina acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2, 4.1(b) and 4.2(a) of the Agreement on Safeguards because, in making their determination of a threat of serious injury:

- (a) the competent authorities did not properly evaluate all of the factors having a bearing on the situation of the domestic industry;
- (b) the competent authorities evaluated factors in terms of the most recent past without considering them in the context of the entire period investigated. As part of this claim, Chile alleges other deficiencies in the competent authorities' methodology; and
- (c) the competent authorities' findings and conclusions with respect to the factors that they investigated neither proved nor justified the claim that serious injury was clearly imminent and they based their finding of "threat of serious injury" merely on conjecture or remote possibility.<sup>546</sup>

7.84 Argentina denies this claim and submits that the competent authorities conducted an analysis that was consistent with the provisions of Article XIX:1(a) and Article 4.2(a), (b) and (c) of the Agreement on Safeguards.<sup>547</sup> The Panel notes that there is no claim made under Article 4.2(c).

7.85 The Panel will consider these claims in the order set out above, as consideration of the evaluation of the serious injury factors will assist in making findings on the competent authorities' final conclusion that a threat of serious injury existed.

- (a) Period of analysis

7.86 The competent authorities collected and considered data concerning the situation of the domestic industry for the four-year period 1997-2000. This was the period considered by the directors in the joint opinion. Import data was collected and considered for the five-year period 1996-2000, although the quantity of imports relative to domestic production was not calculated for 1996.

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<sup>545</sup> See Argentina's first written submission, paragraphs 64 to 66 and its response to question No. 11 of the Panel. Contrast the references to "peaches in syrup" with "canned peaches" in the Sectoral Study in Exhibit CHL-6 with the product description in the technical report in the preserved peaches safeguard investigation, pages 11 and 12.

<sup>546</sup> See Chile's first written submission, paragraph 4.32.

<sup>547</sup> See Argentina's second oral statement, paragraphs 36 and 46.

(b) Competent authorities' determination

7.87 The joint opinion contains a section headed "Situation of the domestic industry" which summarizes findings on a series of injury factors, discussed below. The conclusion of that section reads as follows:

"On the basis of the considerations set forth above, of the Technical Report and of the evidence contained in the file, Dr Lidia Elena M. de Di Vico and Dr Héctor Arese conclude that the domestic preserved peaches industry shows indications of injury that grew worse during the last year considered (2000), but that they do not qualify as serious injury. Nevertheless, these indicators reflect a high degree of sensitivity to the change that is taking place in the market as a result of the imports."

7.88 The final phrase links the situation of the domestic industry and imports. The analysis of the evolution of imports in the joint opinion was reproduced in paragraph 7.42 above. The conclusion reached in the joint opinion on the existence of a threat of serious injury, which appears in the section headed "Causality", reads as follows:

"As concluded in the relevant section, there are signs of injury in the domestic industry which, while they do not yet qualify as serious injury within the meaning of Article 4.1(a) of the Agreement on Safeguards, show a high degree of sensitivity to the change taking place in the market as a result of imports. The behaviour of imports observed towards the end of 2000 shows that they have the capacity, in terms of price and volume, to cause serious injury.

"The lack of any indicators in the international market showing that the volume and price of world production and exports, both in the current year and in future years, would not equal or even exceed the levels for the year 2000, leads to the conclusion of threat of serious injury within the meaning of Article 4.1(b)."<sup>548</sup>

7.89 This passage shows that the directors identified imports as the threat to the domestic industry due to their price and volume, and the situation of the domestic industry. The period of time on which they based this determination was "towards the end of 2000". That description of the period of time is not sufficiently precise to know what it was, nor what were the changes in prices and quantities during that period.

7.90 The only injury factor which the directors expressly linked to imports in the section headed "Situation of the domestic industry" was the level of stocks. Otherwise, in their view, the relationship between the injury factors and imports was that the former showed signs of a high degree of sensitivity and the imports had the capacity to cause serious injury.

7.91 The other injury factors which were considered to demonstrate the high degree of sensitivity are reviewed in the joint opinion. Although the joint opinion states that its review of the situation of the domestic industry is an analysis of the situation of the industry during the period 1997-2000, most of the negative variations which it mentions consist of variations in 2000 as compared with 1999. This is the case of reported and estimated domestic production, value of overall domestic market sales, domestic market share, employment, labour productivity, wage bill, exports, selling prices and cost/price ratios. It mentions falls in sales data from the accounting statements of surveyed companies without limiting them to a particular year.

7.92 Most of the factors analysed showed deterioration. Apparent consumption was growing and the volume of sales by the domestic industry was steady. The joint opinion mentioned the former in

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<sup>548</sup> See Annex to Record No. 781, Section V.A.4 headed "Causality".

relation to falling domestic market share but did not mention the latter. It mentioned growth in production reported by the surveyed companies in 1998 and 1999. The statistics for domestic production supplied by CAFIM, which represented 100 per cent of the domestic industry, showed that production was steady in 2000, but the competent authorities gave an explanation why they chose to make their own estimates.<sup>549</sup>

(c) Evaluation of the determination

7.93 Chile's first two claims concern the competent authorities' evaluation, under Article 4.2(a), in making a determination of a threat of serious injury under Article XIX:1(a) of GATT 1994 and Article 2.1 of the Safeguards Agreement. We will apply the standard of review to two aspects of the evaluation in accordance with the following statement of the Appellate Body in *US – Lamb*:

"... in examining a claim under Article 4.2 of the *Agreement on Safeguards*, a panel's application of the appropriate standard of review of the competent authorities' determination has two aspects. First, a panel must review whether the competent authorities have, as a *formal* matter, evaluated *all relevant factors* and, second, a panel must review whether those authorities have, as a *substantive* matter, provided a *reasoned and adequate explanation* of how the facts support their determinations."<sup>550</sup>

7.94 We understand Chile's first two claims to correspond to these two aspects of the competent authorities' determination. We will begin with our review of the formal aspect first and review whether the competent authorities evaluated, as a formal matter, *all relevant factors*.

(i) *All relevant factors*

7.95 Chile claims that the CNCE did not evaluate and investigate all the relevant factors having a bearing on the situation of the domestic industry in particular and at a minimum those explicitly mentioned in Article 4.2(a) of the Agreement on Safeguards. It argues that the competent authorities omitted three of the factors listed in Article 4.2(a), namely productivity, capacity utilization and employment.<sup>551</sup> It made a separate claim regarding an alleged unlisted factor: relating to the domestic industry's "expansive readjustment".<sup>552</sup> Argentina cites parts of the competent authorities' report that purport to show these factors were investigated and evaluated.<sup>553</sup>

7.96 Article 4.2(a) requires a demonstration that the competent authorities evaluated, at a minimum, each of the factors listed in Article 4.2(a) as well as all other factors that are relevant to the situation of the industry concerned.<sup>554</sup> We will therefore assess first whether the competent authorities' determination, as a formal matter, evaluated the three listed relevant factors which Chile claims were omitted.

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<sup>549</sup> The competent authorities could not explain why the domestic production figure for 2000 was identical to 1999 when the production of the companies surveyed had decreased, so the technical team made two estimations for 2000 using two alternative methods. See the methodological notes in the technical report, Annex I, pages 2 and 3.

<sup>550</sup> See the Appellate Body Report in *US – Lamb*, paragraph 141.

<sup>551</sup> See Chile's first written submission, paragraphs 4.61 and 4.64.

<sup>552</sup> See Chile's first written submission, paragraph 4.63 and response to question No. 17 of the Panel.

<sup>553</sup> See Argentina's first written submission, paragraphs 91 to 94 and 104 to 106.

<sup>554</sup> See the Appellate Body Report in *Argentina – Footwear (EC)*, paragraph 136.

### Capacity utilization

7.97 Table 6 of the technical report contains data for capacity utilization, which shows that among those companies surveyed this factor improved in 1999 and declined in 2000 to its 1998 level of 73 per cent. It also shows that the technical team calculated an industry-wide figure based on the figures supplied by CAFIM which showed that this factor improved in 1999 and remained steady in 2000. A statement by CAFIM to this effect is noted in the body of the technical report.<sup>555</sup> All of this shows merely that data on capacity utilization was collected and tabulated. However, in terms of what the competent authorities *evaluated*, in accordance with Article 4.2(a), the joint opinion does not mention "capacity utilization" as such. It does refer to the methodology for calculation of production and installed capacity but does not mention any statistic or result for installed capacity.

7.98 Argentina argued that the competent authorities considered both the fall in production and the increase in capacity.<sup>556</sup> However, it did not direct us to any place on the record that shows that they conducted any *evaluation* of capacity utilization nor, for that matter, installed capacity. The only indirect reference to capacity utilization which the Panel could see in the joint opinion is a statement that the directors reached the conclusion that the industry showed a high degree of sensitivity (which was a prelude to the determination of a threat of serious injury) based on the consideration of injury factors in the joint opinion (which did not include capacity utilization), the technical report (which did include capacity utilization) and the evidence contained in the file. A catch-all phrase of this kind does not demonstrate an evaluation of a factor.

7.99 The most that the Panel can say is that the CNCE directors who voted in favour of the measure may have read the table of statistics which showed that capacity utilization either declined to 1998 levels or remained steady but there is nothing on the record that shows that they evaluated the factor. It is not even clear which figure they might have referred to for 2000, or whether they might have referred to both. Therefore, the Panel finds that the competent authorities did not, as a formal matter, evaluate this factor as required by Article 4.2(a).

### Productivity

7.100 Table 7e of the technical report contains statistics on "*producto medio físico del empleo*".<sup>557</sup> When asked to clarify, Argentina explained that this term was a measure of "own production divided by the number of employees in the preserved peaches production sector".<sup>558</sup> The body of the technical report does not discuss this term. However, unlike capacity utilization, the joint opinion mentions this factor and notes falls, i.e. a deterioration, which it relates to falls in sales and production. This indicates some evaluation, even if it represents the bare minimum. Without prejudice to the question whether labour productivity was a sufficient measure of productivity in the preserved peaches industry, the Panel finds that productivity was evaluated, as a formal matter, as required by Article 4.2(a).

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<sup>555</sup> See the technical report, page 42 for the statement by CAFIM. See page 87 for a statement by the European Commission which appears in Part VI and therefore "does not in any way constitute the opinion of the CNCE technical team" (page 73).

<sup>556</sup> See Argentina's first written submission, paragraphs 93 and 94, its rebuttal, paragraph 27 and its response to question No. 48 of the Panel.

<sup>557</sup> We provisionally translated this term as "labour productivity". We asked Argentina to explain this term and drew attention to the translation. It did not object to our translation.

<sup>558</sup> See Argentina's response to question No. 49 of the Panel. Chile was non-committal on the meaning of this term: see Chile's response to question No. 51 of the Panel.

## Employment

7.101 Tables 7a and 8 of the technical report contain data on the level of employment and the total production wage bill. The body of the technical report refers to the level of employment in primary production.<sup>559</sup> The joint opinion, in the same sentence in which it notes falls in labour productivity, mentions employment, noting falls in 2000 which it relates to falls in sales and production. The Panel therefore finds that employment was evaluated, as a formal matter, as required by Article 4.2(a).

### (ii) *Reasoned and adequate explanation*

7.102 Turning to Chile's claim concerning the substantive aspects of the competent authorities' findings and conclusions of a threat of serious injury, the Panel must review whether the competent authorities provided a reasoned and adequate explanation of how the facts supported their determination that a threat of serious injury existed. The temporal focus of the competent authorities' evaluation of the data, and the alternative explanation that the rate and amount of the increase in imports reflected a recovery to historical levels, are among the various methodological issues which Chile has raised.<sup>560</sup>

7.103 We recall certain statements of the Appellate Body in *US – Lamb* concerning the appropriate standard of review. We have already quoted those statements concerning the value of the most recent data in making a determination of the existence of a threat of serious injury, but also the danger of evaluating the most recent data in isolation and the need to evaluate the short-term trends in the light of the longer term trends.<sup>561</sup> We also bear in mind another statement in that report concerning the standard of review of a determination of a threat of serious injury:

"We wish to emphasize that, although panels are not entitled to conduct a *de novo* review of the evidence, nor to *substitute* their own conclusions for those of the competent authorities, this does *not* mean that panels must simply *accept* the conclusions of the competent authorities. To the contrary, in our view, in examining a claim under Article 4.2(a), a panel can assess whether the competent authorities' explanation for its determination is reasoned and adequate *only* if the panel critically examines that explanation, in depth, and in the light of the facts before the panel. Panels must, therefore, review whether the competent authorities' explanation fully addresses the nature, and, especially, the complexities, of the data, and responds to other plausible interpretations of that data. A panel must find, in particular, that an explanation is not reasoned, or is not adequate, if some *alternative explanation* of the facts is plausible, and if the competent authorities' explanation does not seem adequate in the light of that alternative explanation. Thus, in making an 'objective assessment' of a claim under Article 4.2(a), panels must be open to the possibility that the explanation given by the competent authorities is not reasoned or adequate."<sup>562</sup>

7.104 The Panel will consider the temporal focus of the competent authorities' evaluation of the data in making their determination of a threat of serious injury, and whether their explanation was adequate in the light of any plausible alternative explanation of the facts.

7.105 The determination of a threat of serious injury in this case rests on two findings: one regarding the capacity of imports to cause injury and the other regarding the "sensitivity" of the domestic market. Argentina argues that the determination was based on the overall weighing of all of

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<sup>559</sup> See the technical report, page 25.

<sup>560</sup> See Chile's first written submission, paragraphs 4.35-4.58.

<sup>561</sup> See Appellate Body Report in *US – Lamb*, paragraphs 137 and 138, quoted in this Report at paragraphs 7.62 and 7.64 above.

<sup>562</sup> See Appellate Body Report in *US – Lamb*, paragraph 106.

the factors having a bearing on the industry as set forth in the technical report and as illustrated in a chart.<sup>563</sup> However, the joint opinion makes it clear that the directors relied, with respect to imports, on the last part of 2000 and, with respect to the situation of the domestic industry, mainly on the variation from 1999 to 2000. The joint opinion makes no mention of the rest of the period of analysis which, in the case of import data, was 1996-2000 and, in the case of the situation of the domestic industry, was 1997-2000.

7.106 Although the directors did not explain why they chose to rely on data from the very end of the period of analysis, it is clear that in a case of a determination of a *threat* of serious injury, such as this, the data relating to the most recent past provided them with an essential basis for a projection of future conditions.<sup>564</sup> However, once again we recall the balancing consideration that if the most recent data is evaluated in isolation, the resulting picture of the domestic industry may be quite misleading.<sup>565</sup>

7.107 In the preserved peaches investigation, the data for the most recent period was quite different from that for the rest of the period of analysis. Of the nine injury factors cited, in almost all cases the figure for 2000 showed a modest deterioration compared to the improvement during the previous years. The most significant decrease was in the production figure reported by the surveyed companies which showed a 14 per cent decline in the last year of the analysis, but this came after increases of 20 per cent and 39 per cent in the previous years of the period of analysis.<sup>566</sup> The production figure generated by the competent authorities showed a 12 per cent decline in the last year of the period of analysis after a decrease of 4 per cent and an increase of 21 per cent. Most of the injury factors considered in reaching the conclusion that the domestic industry displayed a high degree of sensitivity showed that the condition of that industry in 2000 was better than in 1998, which itself was an improvement on 1997. These factors appeared to be returning to their pre-1998 levels after an unusually favourable period.

7.108 The impact of the longer term trends in the data could have been decisive on the competent authorities' conclusion that the industry displayed a high degree of sensitivity, which was an essential part of the determination of a threat of serious injury, as formulated in the joint opinion. This importance of the longer term trends is illustrated by the fact that the only directors who explained the impact of the favourable longer term trends reached the conclusion that the preserved peaches measure was not justified.

7.109 The joint opinion offers no explanation of the impact of the improvements throughout the period of analysis on their determination of a threat of serious injury. It offers no explanation of the choice of 1999, or late 2000, as a benchmark for evaluation of these factors. Instead, it assumes that those years were an appropriate benchmark for its evaluation of the situation of the domestic industry. In view of these trends over the period of analysis, these explanations are essential to provide a reasoned and adequate explanation of the conclusion that the domestic industry showed a high degree of sensitivity, which was an essential step in the way the joint opinion made its determination of a threat of serious injury.

7.110 There was no improvement in 2000 over 1998 in the volume and value of imports, selling prices for the domestic industry and sales value data of the surveyed companies. However, the increase in imports in 2000 over 1998 was less than the decrease in 1998 over 1996, so that the

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<sup>563</sup> See Argentina's rebuttal, paragraph 104, referring to charts in the technical report at pages 26, 27, 47 and 49.

<sup>564</sup> See Appellate Body Report in *US – Lamb*, paragraph 137, raised by Argentina in relation to the determination of an increase in imports and quoted above.

<sup>565</sup> See Appellate Body Report in *US – Lamb*, paragraph 138, quoted above.

<sup>566</sup> See Table 1 of the technical report. CAFIM indicated that production was identical in 1999 and 2000.

volume of imports in absolute terms actually declined over the entire period of analysis (1996-2000) by a seventh in terms of volume and over a third in terms of value. The average prices of imports showed modest increases to 1998 and then a steep decline to 2000 which was inversely proportional to the volume of imports. These factors formed the basis of the finding that imports had the capacity to threaten serious injury. The average selling prices for the domestic industry showed a slight decline to 1998 and then followed the same trend of a steeper decline to 2000. Sales value data of the surveyed companies showed an improvement to 1998 or 1999 and then a steep decline to 2000.

7.111 The directors viewed the most recent data for the volume and price of imports, in fact, the period "toward the end of 2000" at the very end of the period of analysis. They did not relate it to data for the rest of the period of analysis but isolated it. The joint opinion offers no explanation of the impact of the decrease in imports over the entire period of analysis. We have already dealt with Argentina's arguments that they did not isolate the recent import data from the rest of the period of analysis at paragraphs 7.66 to 7.68. We do not accept them in relation to the threat of serious injury determination for the same reasons.

7.112 An alternative plausible explanation of the variations in import prices and volumes, and the average selling prices for the domestic industry, was open on the facts. This was that the volume of imports represented a return to pre-1998 levels, after the effects of an unusual climatic factor. The increase in imports at the end of the period of analysis continued a trend which began in 1998 but, when viewed in the light of all the data analysed from 1996, was open to this alternative explanation. The deceleration in the increase in imports in the last year of the period of analysis also supported this alternative explanation. Even if the import data for 1996 was excluded, the directors acknowledged that the low volume of imports in 1997 was due to a bad harvest in Greece. The data showed that the relative quantity of imports from Greece in 1997 represented almost zero and that it had recovered more or less in line with the total increase in imports since then.

7.113 The Panel sees nothing in the joint opinion that addresses this alternative plausible explanation. During the investigation, it was suggested that the increase in imports was merely a recovery.<sup>567</sup> The technical team observed that imports "recovered" in 1999 and 2000, and described the increase in supply of peaches in Greece in 1999 and the increase in exports from Greece in 1998 and 1999 as a "recovery".<sup>568</sup> They also described a "recovery" in production in Chile in 1999 followed by a decline. The directors who voted in favour of the preserved peaches measure did not address it.

7.114 Viewed as a recovery after the bad Greek harvest, the behaviour of imports and domestic prices was consistent with the pattern of the other injury factors which appeared to be returning to their pre-1998 levels after an unusually favourable period. The plausibility of this alternative explanation is illustrated by the fact it was accepted by the other CNCE directors.<sup>569</sup> We cite their opinion only to show that the explanation was plausible, not that it was correct.

7.115 Argentina argued before the Panel that the increase was not a recovery, but it has not directed our attention to any passage in the competent authorities' report that addressed such an explanation and gave a reason for rejecting it.<sup>570</sup> Argentina drew attention to the fact that the growth rate in imports from 1998 onwards "grew at a faster rate than in 1996" but it has not shown where this contrast was drawn by the competent authorities nor explained how that would exclude the possibility that the later increase was nonetheless a recovery.<sup>571</sup> Argentina argued that the volume of stocks in

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<sup>567</sup> See the submission of the Chilean representation to the investigation, reflected in the technical report, page 84.

<sup>568</sup> See the technical report, pages 32, 58, 59 and 71.

<sup>569</sup> See the separate opinions of Dra. Diana Tussie and Lic. Elías A. Baracat, in the Annex to Record No. 781, Sections V.B and V.C, respectively.

<sup>570</sup> See Argentina's first written submission, paragraph 115.

<sup>571</sup> See Argentina's second oral statement, paragraph 49.

Greece, and the ease with which they could have been poured onto the Argentine market, were essential variables in the evaluation of the threat of serious injury.<sup>572</sup> However, an explanation was required as to why these levels of stocks were not part of a recovery, and none was given. Argentina argued that it was the overall weighing of all of the factors having a bearing on the industry that ultimately supported the determination of threat of serious and imminent injury<sup>573</sup> but it has not directed our attention to any passage in the competent authorities' report that addressed the possibility that the injury factors analysed in relation to the situation of the domestic industry were simply returning to their pre-1998 levels.

7.116 The directors who voted in favour of the preserved peaches measure viewed the data for the most recent period in isolation and did not acknowledge the alternative plausible explanation. The considerable increase in imports in 2000 and deterioration in certain injury factors – viewed in isolation – led them to a potentially very different conclusion from an evaluation in the light of all data before the competent authorities. They explained their finding on the basis of the most recent period and did not offer any explanation of that data in light of the longer term data which was before them. They did not seek to deal with the alternative plausible explanation, even though it was disclosed in the technical report.

7.117 The Panel is not substituting its own opinion for that of the competent authorities. In fact, the Panel has not formed its own opinion on either the situation of the domestic industry or the capacity of imports to cause serious injury in 2001. Rather, the Panel finds that for the reasons given above, the explanation of the determination of a threat of serious injury was not reasoned or adequate as required by Article 4.2(a).

(iii) *Clearly imminent*

7.118 Chile also argues that the purported determination of threat of serious injury did not satisfy the definition of a "threat of serious injury" in Article 4.1(b).<sup>574</sup> That definition reads as follows:

"threat of serious injury' shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility."

7.119 This definition refers to "serious injury" which is defined in Article 4.1(a) as follows:

"serious injury' shall be understood to mean a significant overall impairment in the position of a domestic industry."

7.120 Chile claims that the finding of a threat of serious injury did not demonstrate that the threat was "clearly imminent". That phrase has been interpreted by the Appellate Body as follows:

"(...) The word 'imminent' relates to the moment in time when the 'threat' is likely to materialize. The use of this word implies that the anticipated "serious injury" must be on the very verge of occurring. Moreover, we see the word 'clearly', which qualifies the word 'imminent', as an indication that there must be a high degree of likelihood that the anticipated serious injury will materialize in the very near future. We also note that Article 4.1(b) provides that any determination of a threat of serious injury 'shall be based on facts and not merely on allegation, conjecture or *remote possibility*.' (emphasis added) To us, the word 'clearly' relates also to the *factual* demonstration of

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<sup>572</sup> See Argentina's first written submission, paragraph 82.

<sup>573</sup> See Argentina's first written submission, paragraph 107.

<sup>574</sup> See Chile's first written submission, paragraph 4.32 and its rebuttal, paragraph 35(d).

the existence of the 'threat'. Thus, the phrase 'clearly imminent' indicates that, as a matter of fact, it must be manifest that the domestic industry is on the brink of suffering serious injury."<sup>575</sup>

7.121 In the present case, the directors' conclusion was that that the industry showed a "high degree of sensitivity" in circumstances which did not constitute serious injury. Sensitivity of any degree does not show that serious injury is about to occur – it depends on the likelihood and imminence of the threat. In this case, the threat was described as the "capacity" of imports to cause serious injury.<sup>576</sup>

7.122 The "capacity" of imports is a reference to the *possibility* of causing serious injury, not a threat. The directors purported to identify the threat in the following paragraph of their conclusion, but they did not indicate any degree of likelihood that serious injury would occur, let alone a high degree of likelihood. There was a statement that the increase in imports in the most recent period was "sharp" but the conclusion was not drawn that this indicated that the imports that would cause serious injury were about to occur. There was just an acknowledgement of the possibility. There was no attempt to make a projection of what was about to occur, nor a fact-based assessment of the likelihood of the imports increasing. In the light of the flawed temporal focus of the analysis of the data, the use of the most recent data did not necessarily indicate the future state of imports. In the light of the alternative explanation that the imports were recovering to their historical levels, the most recent increase did not necessarily indicate that they would continue to increase either at all or at the same rate.

7.123 Argentina reminded us of another statement by the Appellate Body in *US – Line Pipe* that "serious injury does not generally occur suddenly".<sup>577</sup> However, this does not affect the definition of threat of serious injury in Article 4.1(b) which requires that the serious injury be "clearly imminent". Indeed, this requirement was recalled by the Appellate Body in the passage from which Argentina quoted.

7.124 Consequently, we find that this determination does not purport to find that there is a high degree of likelihood that the threat would materialize in the very near future. Therefore, we find that the determination does not contain a finding that serious injury is clearly imminent as required by Article 4.1(b).

(iv) *Remote possibility*

7.125 Chile argues that the determination of threat of serious injury was not based on facts but merely on "conjecture or remote possibility", which is inconsistent with the definition in Article 4.1(b).<sup>578</sup> The relevant conclusion (in the section headed "Causality") in the joint opinion is reproduced at paragraph 7.88 above.

7.126 Chile describes this assertion as a "prediction" based not on supporting analysis or empirical evidence but rather on an assumption based, in turn, on a lack of indicators.<sup>579</sup> Argentina asserts that it was the overall weighing of all of the factors having a bearing on the industry as set forth in the technical report that ultimately supported the determination of threat of serious and imminent injury.<sup>580</sup>

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<sup>575</sup> See Appellate Body Report in *US – Lamb*, paragraph 125.

<sup>576</sup> See Annex to Record No. 781, Section V.4 headed "Causality".

<sup>577</sup> See Argentina's First Oral Statement, paragraph 53, citing the Appellate Body Report in *US – Line Pipe*, paragraph 168.

<sup>578</sup> See Chile's first written submission, paragraphs 4.32 and 4.69 and its rebuttal, paragraph 35(d).

<sup>579</sup> See Chile's first written submission, paragraph 4.68; its rebuttal, paragraph 35(d).

<sup>580</sup> See Argentina's first written submission, paragraph 107.

7.127 In their conclusion, the directors acknowledge that in 2000 the domestic industry was not suffering serious injury. In the second paragraph, they admit the possibility that, in the future, world production and exports might equal or be even greater than in 2000. For this reason, they purported to determine the existence of a threat of serious injury.

7.128 Article 4.1(b) requires a determination of threat of serious injury to be based on facts. The directors based their determination on the possibility that the volume and prices of future world production and exports would be at the same or higher levels than in 2000. They state that it is based on "the lack of any indicators" that this would *not* occur.

7.129 Article 4.1(b) prohibits a determination of threat of serious injury based on remote possibility. The directors partly based their determination on a possibility that volumes and prices would be at the same levels as in 2000, which they acknowledged did not present a threat of serious injury. On its own terms, this is not a determination of a threat of serious injury. The directors do not mention any change that they expected in the coming year which would alter the effect of production and exports, so that they must have thought that, at the same levels, they would not present a threat of serious injury. They could not determine a threat of serious injury on the basis of that possibility, even if it did materialize. We note that this was only part of the basis of their determination.

7.130 The directors partly based their determination on the possibility that the volume and prices of future world production and exports would be worse for the domestic industry than in 2000. They recognized that this possibility might not occur at all, since they entertained the possibility that volume and prices might be at the same levels as in 2000, which they had already determined did not present a threat of serious injury.

7.131 In order to succeed on this claim, Chile needs to show that the possibility on which the directors based their claim was "remote" or that it was not based on facts at all. The record shows that it was based on a possibility of the injury caused by future imports, but there is insufficient evidence to conclude that that possibility was remote. The evidence shows that the determination of the threat was at least partly based on the existing quantities and prices of imports, and the evaluation of the injury factors – even if this was inconsistent with Article 4.2(a). There was no real projection from that evidence – which could, for example, have been based on the trends in the data – but that does not indicate a finding not based on facts. For these reasons, we do not find that the determination of threat of serious injury was based not on facts but merely on "remote possibility".

7.132 In view of the above findings, we do not need to consider Chile's claims regarding other alleged deficiencies in the methodology used by the competent authorities in their evaluation of various injury factors, nor its claim regarding the domestic industry's "expansive readjustment" as another factor required to be evaluated under Article 4.2(a).

7.133 In view of our findings at paragraphs 7.99, 7.117 and 7.124, the Panel finds that Argentina acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2.1, 4.1(b) and 4.2(a) of the Agreement on Safeguards because the competent authorities, in making their determination of the existence of a threat of serious injury:

- (a) did not evaluate, as a formal matter, all of the relevant factors having a bearing on the situation of the domestic industry, in particular, capacity utilization;
- (b) did not provide a reasoned and adequate explanation of how the facts supported their determination; and
- (c) did not find that serious injury was clearly imminent.

7.134 The Panel does not find that the competent authorities' determination of threat of serious injury was based not on facts but on remote possibility.

#### 4. Causal link

7.135 Chile claims that Argentina acted inconsistently with Articles 2.1, 3.1 and 4.2(b) of the Agreement on Safeguards in making its determination of a causal link between the increased imports and the threat of serious injury. Given that the Panel has found that the competent authorities did not demonstrate the existence of an increase in imports nor a threat of serious injury, there is no need for the Panel to make an assessment of the determination of the existence of a causal link. In view of those findings, it would be impossible for us to continue and find that the competent authorities demonstrated a causal link between increased imports that did not occur and a threat of serious injury that did not exist.<sup>581</sup> However, the Panel can expeditiously produce a record of the competent authorities' evaluation of the causal link, which is consistent with its role as the sole trier of fact in this proceeding under the DSU. That record is set out below.

7.136 The section headed "Causality" in the joint opinion, in its entirety, reads as follows:

"Paragraph 4.2(b) of the WTO Agreement on Safeguards stipulates that the serious injury determination for the purposes of applying a safeguard measure shall not be made "unless [the] investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof". It also states that the injury caused by factors other than increased imports shall not be attributed to increased imports.

As concluded in the relevant section, there are signs of injury in the domestic industry which, while it does not yet qualify as serious injury within the meaning of Article 4.1(a) of the Agreement on Safeguards, show a high degree of sensitivity to the change taking place in the market as a result of imports. The behaviour of imports observed towards the end of 2000 shows that they have the capacity, in terms of price and volume, to cause serious injury.

The lack of any indicators in the international market showing that the volume and prices of world production and exports, both in the current year and in future years, would not equal or even exceed the levels for the year 2000, leads to the conclusion of threat of serious injury within the meaning of Article 4.1(b).

The import situation and the degree of variation and sensitivity of the indicators listed and described in Section V.2 prove the existence of a causal link between the investigated imports and the threat of serious injury."<sup>582</sup>

7.137 The joint opinion does not contain any other references to the causal link condition. The body of the technical report contains no discussion of the causal link, except statements in Part VI which are statements of interested parties during the safeguard investigation. One is a statement by the applicant, CAFIM, that:

"... if imports, irrespective of their origin, continue in the conditions which prevailed prior to the application of the safeguard clause with provisional duties, in particular in relation to the prices of imports from the northern hemisphere, they will cause injury which will prove impossible to remedy and lead to the virtual destruction of domestic

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<sup>581</sup> This was the approach favoured by the Appellate Body in *Argentina – Footwear (EC)*, paragraph 145.

<sup>582</sup> See Annex to Record No. 781, Section V.A.4 headed "Causality".

production of peaches for processing, as well as of the processing industry itself. It is for this reason that we are requesting the application of definitive safeguard measures ... since we feel that the grounds established in the Agreement on Safeguards have all been fully satisfied."<sup>583</sup>

7.138 Two domestic producers also made statements which could be interpreted as listing a variety of factors causing injury.<sup>584</sup> The other relevant statements in Part VI of the technical report were made by the European Commission. It said that:

"... with regard to the causal link between increased imports and the threat of serious injury, Argentina has not provided any evidence of a link between the possible injury and the said imports"; and

"... the key sectoral indicators, such as the level of domestic producer profits, increase in production levels, use of installed capacity, exports, average labour productivity indicators and actual and planned investment volumes, discount any form of actual injury or threat of future injury caused by the entry into the country of imported products."<sup>585</sup>

7.139 Neither party has directed the Panel's attention to any additional passages in the competent authorities' report which could show how they made their determination of a causal link.

## 5. Judicial economy

7.140 Article 11 of the DSU provides that the Panel's function is to assist the DSB in discharging its responsibilities under the DSU and the covered agreements. It does not require us to examine all the legal claims made by Chile. Our findings should assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. We are mindful of the approach of the Appellate Body in *US – Wool Shirts and Blouses* that we need only address those claims which we consider necessary for the resolution of the matter between the parties.<sup>586</sup> At the same time, we are mindful of the balancing consideration expressed by the same body in *Australia – Salmon* that a panel has to address those claims on which a finding is necessary in order to enable the DSB to make sufficiently precise recommendations and rulings so as to allow for prompt compliance by a Member with those recommendations and rulings in order to ensure effective resolution of disputes to the benefit of all Members.<sup>587</sup>

7.141 In view of our findings at paragraphs 7.35, 7.82 and 7.133 that Argentina acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2.1, 4.1(b) and 4.2(a) of the Agreement on Safeguards, we can conclude that the preserved peaches measure lacks a legal basis under the relevant covered agreements. Further findings on Chile's other claims cannot alter that conclusion and would not further assist the DSB in making sufficiently precise recommendations to allow for prompt compliance by Argentina with those recommendations. Accordingly, the Panel chooses to exercise judicial economy and declines to rule on the claims made under Articles 2.1 and 4.2(b) of the Agreement on Safeguards regarding the causal link, and under Articles 3, 5.1 and 12.2 of the Agreement on Safeguards, regarding the published report, the permissible extent of application of the measure, and notification, respectively.

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<sup>583</sup> See the technical report, Part VI.1, page 91.

<sup>584</sup> See the technical report, pages 77 and 78.

<sup>585</sup> See the technical report, pages 88 and 93.

<sup>586</sup> See Appellate Body Report in *US – Wool Shirts and Blouses*, page 19; DSR 1997:I, at p. 340.

<sup>587</sup> See Appellate Body Report in *Australia – Salmon*, paragraph 223.

7.142 Chile requests the Panel to rule on all of the claims presented "in order to ensure that Argentina does not continue to violate these agreements as it has done".<sup>588</sup> Chile did not offer any explanation as to why ruling on *all* claims would achieve this objective. Furthermore, we must presume that all Members will comply with their obligations under the covered agreements in good faith, and we have seen no evidence that Argentina will continue to violate the agreements at issue in this dispute. The Panel therefore declines to agree to Chile's request.

## VIII. CONCLUSIONS AND RECOMMENDATION

8.1 In the light of our findings, we conclude that the Argentine preserved peaches measure was imposed inconsistently with certain provisions of the Agreement on Safeguards and GATT 1994. In particular:

- (a) Argentina acted inconsistently with its obligations under Article XIX:1(a) of GATT 1994 by failing to demonstrate the existence of unforeseen developments as required;
- (b) Argentina acted inconsistently with its obligations under Article XIX:1(a) of GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards by failing to make a determination of an increase in imports, in absolute or relative terms, as required;
- (c) Argentina acted inconsistently with its obligations under Article XIX:1(a) of GATT 1994 and Articles 2.1, 4.1(b) and 4.2(a) of the Agreement on Safeguards because the competent authorities, in their determination of the existence of a threat of serious injury:
  - (i) did not evaluate all of the relevant factors having a bearing on the situation of the domestic industry;
  - (ii) did not provide a reasoned and adequate explanation of how the facts supported their determination; and
  - (iii) did not find that serious injury was clearly imminent.

8.2 The Panel does not find that Argentina acted inconsistently with its obligations under Articles 2.1 and 4.1(b) of the Agreement on Safeguards by basing a finding of the existence of a threat of serious injury on an allegation, conjecture or remote possibility.

8.3 In light of these conclusions, we decline to rule on Chile's claims that:

- (a) Argentina acted inconsistently with its obligations under Article XIX:1(a) of GATT 1994 because the facts before the competent authorities showed that the alleged unforeseen developments were not unforeseen;
- (b) Argentina acted inconsistently with its obligations under Article 3 of the Agreement on Safeguards by failing to include in its published report adequate and sufficient findings on all pertinent issues of fact and law;
- (c) Argentina acted inconsistently with Articles 2.1 and 4.2(b) of the Agreement on Safeguards in its analysis of a possible causal link between the alleged increased imports and the alleged threat of serious injury;

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<sup>588</sup> See Chile's first written submission, final paragraph and its rebuttal, paragraph 72.

- (d) the level and formulation of the definitive preserved peaches measure are inconsistent with Article 5.1 of the Agreement on Safeguards because they exceed the extent necessary to prevent or remedy the alleged threat of serious injury and to facilitate adjustment; and
- (e) Argentina acted inconsistently with Article 12.2 of the Agreement on Safeguards because its notification to the Committee on Safeguards of its finding of alleged threat of serious injury as a result of alleged increased imports failed to include evidence substantiating that finding.

8.4 Under Article 3.8 of the DSU, in cases where there is infringement by a Member of its obligations assumed under a covered agreement, such action is considered prima facie to constitute a case of nullification or impairment of benefits under that agreement. We have seen no evidence in these proceedings that would rebut Chile's prima facie case against Argentina. Accordingly, we conclude that to the extent that Argentina has acted inconsistently with the provisions of the Agreement on Safeguards and GATT 1994, as described in paragraph 8.1, it has nullified or impaired the benefits accruing to Chile under those two agreements.

8.5 We therefore recommend that the Dispute Settlement Body request Argentina to bring its preserved peaches measure into conformity with its obligations under the Agreement on Safeguards and GATT 1994.

**IX. ANNEX**

**A. ABBREVIATIONS USED FOR DISPUTE SETTLEMENT CASES REFERRED TO IN THE REPORT**

<b>SHORT TITLE</b>	<b>FULL TITLE</b>
<i>Argentina – Footwear (EC)</i>	Panel Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/R, adopted 12 January 2000, as modified by the Appellate Body Report, WT/DS121/AB/R, DSR 2000:II, 575.
<i>Argentina – Footwear (EC)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515.
<i>Australia – Salmon</i>	Appellate Body Report, <i>Australia – Measures Affecting Importation of Salmon</i> , WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, 3327.
<i>Chile – Price Band System</i>	Panel Report, <i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i> , WT/DS207/R, 3 May 2002, adopted 23 October 2002, as modified by the Appellate Body Report, WT/DS207/AB/R.
<i>India – Patents (US)</i>	Appellate Body Report, <i>India – Patent Protection for Pharmaceutical and Agricultural Chemical Products</i> , WT/DS50/AB/R, adopted 16 January 1998, DSR 1998:I, 9.
<i>Korea – Dairy</i>	Panel Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/R and Corr.1, adopted 12 January 2000, as modified by the Appellate Body Report, WT/DS98/AB/R, DSR 2000:I, 49.
<i>Korea – Dairy</i>	Appellate Body Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3.
<i>US – Cotton Yarn</i>	Appellate Body Report, <i>United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan</i> , WT/DS192/AB/R, adopted 5 November 2001.
<i>US – Fur Felt Hats</i>	Report on the Withdrawal by the United States of a Tariff Concession under Article XIX of the General Agreement on Tariffs and Trade, <i>GATT/CP/106</i> , adopted 22 October 1951.
<i>US – Hot-Rolled Steel</i>	Panel Report, <i>United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan</i> , WT/DS184/R, adopted 23 August 2001 as modified by the Appellate Body Report, WT/DS184/AB/R.
<i>US – Lamb</i>	Panel Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/R, WT/DS178/R, adopted 16 May 2001, as modified by the Appellate Body Report, WT/DS177/AB/R, WT/DS178/AB/R.
<i>US – Lamb</i>	Appellate Body Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001.
<i>US – Line Pipe</i>	Panel Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/R, adopted 8 March 2002, as modified by the Appellate Body Report, WT/DS202/AB/R.

<b>SHORT TITLE</b>	<b>FULL TITLE</b>
<b><i>US – Line Pipe</i></b>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/AB/R, adopted 8 March 2002.
<b><i>US – Wheat Gluten</i></b>	Panel Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/R, adopted 19 January 2001, as modified by the Appellate Body Report, WT/DS166/AB/R.
<b><i>US – Wheat Gluten</i></b>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/AB/R, adopted 19 January 2001.
<b><i>US – Wool Shirts and Blouses</i></b>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R and Corr.1, adopted 23 May 1997, DSR 1997:I, 323.

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