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**PERU – ADDITIONAL DUTY ON IMPORTS OF
CERTAIN AGRICULTURAL PRODUCTS**

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY GUATEMALA

The following communication, dated 13 June 2013, from the delegation of Guatemala to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 12 April 2013, Guatemala requested consultations with Peru pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 19 of the Agreement on Agriculture, Article 19 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement), and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), with respect to the imposition by Peru of an additional duty on imports of certain agricultural products.

Guatemala and Peru held consultations on 14 and 15 May 2013. Unfortunately, these consultations failed to resolve the dispute. Accordingly, Guatemala respectfully requests, pursuant to Articles 4.7 and 6 of the DSU, Article 19 of the Agreement on Agriculture, Article 19 of the Customs Valuation Agreement, and Article XXIII:2 of the GATT 1994, that the Dispute Settlement Body (DSB) establish a panel to examine this matter in light of the measure and the claims set forth below.

1 THE MEASURE AT ISSUE

The measure at issue is the additional duty imposed by Peru on imports of certain agricultural products, such as milk, maize, rice and sugar (hereinafter affected products). The additional duty is characterized by the following:

- (a) It has been in force since 22 June 2001.
- (b) It consists of a levy that is variable and that is imposed in addition to the ordinary customs duty.
- (c) It applies to imports of the affected products "when the international reference prices of such products are below certain floor price levels, and tariff rebates [apply] when these reference prices are above certain ceiling price levels".
- (d) It is determined by using a mechanism known as the "Price Band System" which, in its turn, operates on the basis of two components: (i) a band made up of a floor price and a ceiling price which, in accordance with the applicable regulations, reflect the international price over the last 60 months for the different products concerned; (ii) a c.i.f reference price, which is published every two weeks and which, in accordance with the applicable regulations, reflects the average international market price for the different products concerned.

- (e) Both the price band and the c.i.f reference prices vary periodically as a result of the application of certain formulas to the changing circumstances in the markets for the products in question. The price band varies every six months, while the c.i.f reference prices vary every two weeks. The relevant legislation does not provide the Peruvian authorities with any margin for manoeuvre or discretion when it comes to applying these formulas.
- (f) The amount is specific, and is expressed in US dollars per metric tonne. The value of goods submitted for clearance is not taken into consideration.
- (g) It is payable upon importation of the affected products, together with the ordinary customs duty and other import taxes on the affected products.

Guatemala believes that this measure is contained, essentially, in the following instruments:

- (a) Supreme Decree No. 115-2001-EF, published in the Official Journal "El Peruano" of 22 June 2001;
- (b) Supreme Decree No. 124-2002-EF, published in the Official Journal "El Peruano" of 17 August 2002;
- (c) Supreme Decree No. 153-2002-EF, published in the Official Journal "El Peruano" of 27 September 2002;
- (d) Supreme Decree No. 174-2002-EF, published in the Official Journal "El Peruano" of 15 November 2002;
- (e) Supreme Decree No. 184-2002-EF, published in the Official Journal "El Peruano" of 27 November 2002;
- (f) Supreme Decree No. 197-2002-EF, published in the Official Journal "El Peruano" of 30 December 2002;
- (g) Supreme Decree No. 003-2006-EF, published in the Official Journal "El Peruano" of 13 January 2006.
- (h) Supreme Decree No. 121-2006-EF, published in the Official Journal "El Peruano" of 20 July 2006;
- (i) Circular No. INTA-CR.62-2002 of 26 August 2002 of the National Technical Customs Department;
- (j) Circular No. INTA-CR.82-2002 of 5 December 2002 of the National Technical Customs Department;
- (k) Circular No. 002-2003-SUNAT/A of 28 February 2003 of the National Tax Administration Supervisory Authority;
- (l) Circular No. 010-2004-SUNAT/A of 10 September 2004 of the National Tax Administration Supervisory Authority;
- (m) Judgement No. 03041-A-2004 of the Tax Court, dated 14 May 2004;
- (n) Judgement No. 02364-A-2007 of the Tax Court, dated 15 March 2007;
- (o) The Supreme Decrees published semi-annually containing the customs tables for determining the floor and ceiling prices of the price band;
- (p) The Vice-Ministerial Resolutions published every two weeks containing the c.i.f reference prices.

In addition to the instruments listed above, this request covers any other regulation, instruction, administrative or judicial practice, methodology or guideline, whether currently in force or adopted subsequently, that amends, supplements, develops, or is otherwise related to the regulatory instruments expressly mentioned in this request.

2 LEGAL BASIS FOR THE COMPLAINT

The measure at issue is inconsistent with Peru's obligations under the Agreement Establishing the World Trade Organization (WTO Agreement), and in particular, with the following provisions:

- (a) Article 4.2 of the Agreement on Agriculture, since it is a variable import levy and/or minimum import price, or at the very least, it constitutes a measure similar to those two categories within the meaning of footnote 1 of the Agreement on Agriculture, and such measures are prohibited under that provision;
- (b) Article II:1(a) and the second sentence of Article II:1(b) of the GATT 1994, since the measure is a duty or charge other than an ordinary customs duty and is not included in Peru's schedule of concessions; it was not in effect as at 15 April 1994, nor does it appear to have been required on that date by any mandatory provision of Peruvian law. In any case, the measure appears to be inconsistent with paragraphs 1, 2, 3 and 4 of the Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994, since Peru did not record this levy in its schedule of concessions;
- (c) Article XI:1 of the GATT 1994, to the extent that the imposition of the additional duty constitutes an import restriction by effectively establishing a system similar to that of minimum import prices;
- (d) Article X:1 of the GATT 1994, to the extent that certain aspects of the measure are not published, so that traders are prevented from becoming fully acquainted with the measure. Among the aspects that are not published are: the components and/or the means of determining the notion of "import costs" amounting to 3% that is taken into consideration for determining the additional duties; and the reason, basis or formula for determining the adjustment factor of 1.107 for the floor price of sugar;
- (e) Article X:3(a) of the GATT 1994, since Peru does not administer the measure at issue in conformity with the independent requirements of uniformity, impartiality and reasonableness. Each of these violations is due, *inter alia*, to the fact that on several occasions, Peru failed to apply the formula laid down in the relevant regulations to determine the floor and ceiling prices and the customs tables relating to those prices. What Peru did, in those cases, was to extend the validity of the customs tables applicable during the previous period, without any justification or explanation of this failure to apply its own regulations;
- (f) Articles 1, 2, 3, 5, 6 and 7 of the Customs Valuation Agreement, to the extent that the measure at issue is not based on a value determined with conformity with the custom valuation methods laid down in those provisions, and is applied on the basis of c.i.f reference prices that could qualify as "minimum customs values" or "arbitrary or fictitious values" within the meaning of Article 7.2(b), 7.2(f) and 7.2(g) of the Agreement on customs valuation.

Under Article 3.8 of the DSU, the measure at issue nullifies or impairs benefits accruing to Guatemala under the various provisions mentioned in this request.

In view of the above considerations, Guatemala requests the DSB to establish a panel to examine this matter with the standard terms of reference as set out in Article 7.1 of the DSU. Guatemala asks that this request for the establishment of a panel be included in the agenda of the DSB meeting scheduled for 25 June 2013.