



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

**NOTIFICATION OF AN OTHER APPEAL BY GUATEMALA  
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES  
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),  
AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 30 March 2015, from the delegation of Guatemala, is being circulated to Members.

Pursuant to Article 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 23(1) of the Working Procedures for Appellate Review, Guatemala hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report on *Peru – Additional Duty on Imports of Certain Agricultural Products* (WT/DS457/R), which was circulated on 27 November 2014 (the "Panel Report"). Pursuant to Rule 23(3) of the Working Procedures for Appellate Review, Guatemala is simultaneously filing this Notice of Other Appeal and its Other Appellant's Submission with the Appellate Body Secretariat.

Guatemala appeals the Panel's finding on paragraphs 7.370, 7.371 and 8.1(c) of the Panel Report that the duties resulting from Peru's Price Range System ("the measure at issue") does not fall within the category of "minimum import prices ... and similar border measures" prohibited under Article 4.2 and footnote 1 of the Agreement on Agriculture.<sup>1</sup>

Guatemala seeks review by the Appellate Body of the following errors of law by the Panel in the Panel Report:

**I. The Panel erred in applying an excessively narrow legal standard to define measures that constitute a minimum import price within the meaning of Article 4.2 and footnote 1 of the Agreement on Agriculture**

1. The Panel erred in law in concluding that the measure at issue was not a minimum import price because it was not applied by reference to the actual transaction value of each shipment of imports. In reaching this finding, the Panel applied an excessively narrow legal definition of "minimum import prices" within the meaning of Article 4.2 and footnote 1 of the Agreement on Agriculture.

2. Nothing in the definitions used by the panels and the Appellate Body in the *Chile – Price Band System* disputes implies that the concept of minimum import price includes only measures that are applied with respect to the actual transaction value of each shipment.

3. The reference price of Peru's Price Range System ("PRS") is designed to operate as a substitute or proxy for the typical transaction value of any given shipment. In this sense, the reference price and the manner in which it is calculated, ensures that the floor price functions as a

<sup>1</sup> The Panel's errors in law are contained *inter alia* in paragraphs 7.360, 7.361, 7.366-7.371 and 8.1(c) of the Panel Report. In accordance with Rule 23(2)(c)(ii)(C), the foregoing is an indicative list of the paragraphs of the Panel report containing the alleged errors.

true minimum import price, even if the PRS does not operate directly by reference to actual transaction values of individual shipments.

4. The Panel improperly rejected Guatemala's argument that the measure at issue constitutes a minimum import price even if it does not in every instance equalize entry prices with the floor price. The essential legal character of the measure does not change even if it does not achieve its purpose in every instance.

## **II. The Panel erred in finding that the measure at issue is not a minimum import price despite the existence of an implicit minimum threshold**

5. The Panel's finding that the measure at issue does not constitute a minimum import price failed to consider that the measure's design, structure and operation gives rise to an implicit minimum price threshold. This threshold consists of the sum of the lowest transaction price of the previous fortnight and the duty resulting from the PRS.

6. Even though, in certain instances, the final entry value of an imported product may not reach the floor price, it will always reach or exceed the alternative implicit threshold. It is highly unlikely that a shipment will arrive in Peru at a price lower than the lowest price observed in the international reference market designated by Peru's legislation.

7. The Panel also incorrectly equated the effects of the implicit threshold with those produced by ordinary customs duties in the form of a specific tariff. The implicit threshold contained in the measure at issue affords a specific type of protection not afforded by ordinary specific duties. As acknowledged by the Panel, the PRS has the declared objective of being a "stabilization and protection mechanism that serves to neutralize fluctuations in international prices and limit the negative effects of falls in such prices".<sup>2</sup> Unlike the implicit threshold of Peru's measure, the threshold generated by a specific duty does not respond to changes in world prices of a particular commodity. Additionally, while the implicit threshold is inherently linked to the lowest transaction of the previous fortnight, any ordinary specific duty would lack any such characteristic.

## **III. The Panel erred in conflating the legal standard for minimum import prices with the legal standard for measures "similar" to minimum import prices**

8. The Panel conducted a legally incorrect analysis of whether the measure was "similar" to a minimum import price within the meaning of footnote 1 of the Agreement on Agriculture. The Panel's reasons for finding that the measure at issue is not *similar* to a minimum import price are essentially the same as those for finding that the measure is not a minimum import price. The Panel thus conflated two related but different legal concepts: a minimum import price and a measure similar to a minimum import price.

9. Under the Panel's legal interpretation, a measure could only be "similar" to a minimum import price if, in effect, it *is* a minimum import price.

10. By using a definition of "similar" that was the same as the definition used for minimum import prices, the Panel failed to give effect to the concept of "similar" measures in the context of footnote 1 to Article 4.2 of the Agreement on Agriculture.

## **IV. The Panel erred in finding that Peru's measure is not similar to a minimum import price because it does not impede imports from entering Peru at a price below a certain threshold**

11. The Panel erred in finding that the measure at issue is not similar to a minimum import price because it does not impede imports from entering the Peruvian market at prices below a certain threshold.

12. Contrary to the Panel's conclusion, the design, structure and operation of the measure at issue shows the existence of an explicit threshold, which is the floor price itself. The floor price

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<sup>2</sup> Panel Report, para. 7.317(a).

acts as a true threshold because it operates on the basis of a reference price, which is calculated in a manner that mimics the value of actual transactions.

13. The measure at issue also contains an implicit threshold, which consists of the lowest transaction of the previous fortnight plus the additional duties generated by the PRS. Even if, in certain limited cases, the application of the additional duties fails to elevate the price to the level of the floor price, those shipments will not enter the Peruvian market below the alternative implicit threshold.

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For the above reasons, the Panel erred in law in finding that the measure at issue is neither a minimum import price nor a measure similar to an import price within the meaning of Article 4.2 and footnote 1 of the Agreement on Agriculture. Guatemala, therefore, requests the Appellate Body to reverse the Panel's finding contained in paragraphs 7.370, 7.371 and 8.1 (c) of the Panel Report.

Additionally, Guatemala requests that the Appellate Body complete the legal analysis and find that the measure at issue is inconsistent with Article 4.2 of the Agreement on Agriculture because it is either a minimum import price or a measure similar to a minimum import price. The factual findings contained in the Panel Report, as well as the undisputed facts on the record, constitute a sufficient basis to conclude that the measure at issue is a minimum import price or a measure similar to a minimum import price.

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