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**PERU - ANTI-DUMPING AND COUNTERVAILING MEASURES
ON BIODIESEL FROM ARGENTINA**

REQUEST FOR CONSULTATIONS BY ARGENTINA

The following communication, dated 29 November 2018, from the delegation of Argentina to the delegation of Peru, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Republic of Peru, pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 30 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") and Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement"), with respect to Peru's measures imposing anti-dumping duties and countervailing duties on imports of biodiesel (B100) originating in Argentina, as established in Resolution No. 189-2016/CDB-INDECOPI of 19 October 2016¹ and Resolution No. 011-2016/CDB-INDECOPI of 25 January 2016², and the underlying investigations and their respective initiation notices.³ Peru's measures appear to be inconsistent with Peru's obligations under the following provisions of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement:

1. Article 5.2 of the Anti-Dumping Agreement, because Peru initiated the anti-dumping investigation without there being evidence of dumping in the application filed by the domestic industry;
2. Article 5.3 of the Anti-Dumping Agreement, because Peru does not appear to have examined the accuracy and adequacy of the evidence provided in the application to determine whether it was sufficient to justify the initiation of an anti-dumping investigation;
3. Article 5.8 of the Anti-Dumping Agreement, because Peru did not reject the application under paragraph 1, did not terminate the investigation promptly, and did not satisfy itself that there was sufficient evidence of dumping to justify proceeding with the investigation;
4. Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement, because information which was by nature confidential and/or which was provided on a confidential basis by

¹ Resolution No. 189-2016/CDB-INDECOPI, published in the Official Journal *El Peruano* of 25 October 2016, imposing definitive anti-dumping duties on imports of biodiesel (B100) originating in the Argentine Republic, as confirmed by Resolution No. 0145-2018/SDC-INDECOPI, published in the Official Journal *El Peruano* of 27 July 2018.

² Resolution No. 011-2016/CDB-INDECOPI, published in the Official Journal of 28 January 2016, providing for the application of definitive countervailing duties on imports of biodiesel (B100) originating in the Argentine Republic, as confirmed by Resolution No. 0144-2018/SDC-INDECOPI, published in the Official Journal *El Peruano* of 27 July 2018.

³ The anti-dumping investigation was initiated by Resolution No. 50-2014/CFD-INDECOPI of 20 April 2015, published in the Official Journal *El Peruano* of 26 April 2015. The anti-subsidy investigation was initiated by Resolution No. 081-2014/CFD-INDECOPI of 21 July 2014, published in the Official Journal *El Peruano* of 28 July 2014.

the parties was not treated as such by Peru, and was disclosed without specific permission of those parties;

5. Article 2.2 of the Anti-Dumping Agreement, because Peru failed to determine the margin of dumping by comparison with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits;

6. The first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement because, when constructing the cost of production in the country of origin, Peru included costs not associated with the production and sale of the product under consideration. Furthermore, with regard to the second sentence of Article 2.2.1.1 of the Anti-Dumping Agreement, Peru failed to consider all available evidence on the proper allocation of costs when calculating an amount for administrative, selling and general costs;

7. Article 2.2.2(iii) of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994, because Peru failed to use a reasonable method to calculate the amount for profit;

8. Article 2.2 and Article 2.2.2(iii) of the Anti-Dumping Agreement, interpreted in the light of Article VI:1(b)(ii) of the GATT 1994, because Peru failed to ensure that the margin determined for profit did not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin;

9. Article VI:2 of the GATT 1994 and Article 9.3 of the Anti-Dumping Agreement, because Peru imposed anti-dumping duties in excess of the margin of dumping that it should have established under Article 2 of the Anti-Dumping Agreement;

10. Article 18.1 of the Anti-Dumping Agreement, because Peru took definitive action against the alleged dumping practice in a manner inconsistent with the provisions of the GATT 1994, as interpreted by the Anti-Dumping Agreement;

11. Article 14(d) of the SCM Agreement, interpreted in the light of Article 1.1(a)(1)(iii) and (iv) and Article 1.1(b) of the SCM Agreement, by considering that the Government of the Argentine Republic entrusts private bodies to make a purchase for more than adequate remuneration, and, consequently, Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994, by levying a countervailing duty in excess of the alleged subsidy granted;

12. Article 3.1 and 3.4 of the Anti-Dumping Agreement and Article 15.1 and 15.4 of the SCM Agreement, because Peru failed to make a determination of injury based on positive evidence and involving an objective examination;

13. Article 15.1 and 15.5 of the SCM Agreement and Article 3.1 and 3.5 of the Anti-Dumping Agreement, because Peru failed to conduct an objective examination, based on positive evidence, of other factors that may have caused injury to the domestic industry and, consequently, attributed the injury caused by other factors to the allegedly subsidized and dumped imports;

14. Articles 10, 19.1 and 32.1 of the SCM Agreement, because Peru imposed a countervailing duty not in accordance with the provisions of that Agreement;

15. Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization, Article 32.5 of the SCM Agreement and Article 18.4 of the Anti-Dumping Agreement, because Peru failed to take all necessary steps to ensure that the imposition of the countervailing duties and anti-dumping duties on biodiesel (B100) originating in Argentina was in accordance with the provisions of those Agreements;

16. Article VI:5 of the GATT 1994, because Peru imposed both anti-dumping and countervailing duties on the same product to compensate for the same situation of alleged dumping and subsidization.

Peru's measures appear to nullify or impair the benefits accruing to Argentina, directly or indirectly, under the cited Agreements.

Argentina reserves the right to address, during the course of the consultations, further factual claims and legal issues under other provisions of the WTO Agreement regarding the above matters, including any amendment, replacement, extension, implementation measures or other related measures.

Argentina looks forward to Peru's response to this request with a view to arranging a mutually convenient date and place for the consultations.
