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PERU - PROVISIONAL ANTI-DUMPING DUTIES ON VEGETABLE OILS FROM ARGENTINA

Request for Consultations by Argentina

The following communication, dated 21 October 2002, from the Permanent Mission of Argentina to the Permanent Mission of Peru and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

I have been instructed by my Government to contact you in order to request consultations with the Republic of Peru pursuant to Article XXIII:1 of the GATT 1994 and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), as well as Article 17.3 of the Agreement on Implementation of Article VI of the GATT 1994 (hereinafter referred to as the Anti-Dumping Agreement), in relation to the investigation into allegedly dumped imports of sunflower and soya vegetable oils and mixtures thereof from the Argentine Republic into the Eastern Region (Región Oriente) of Peru, an investigation which resulted in the imposition of provisional anti-dumping duties pursuant to Resolution No. 016-2002-CDS-INDECOPI. Consultations are also requested in relation to the application at national level of provisional anti-dumping duties on imports of sunflower and soya vegetable oils and mixtures thereof from the Argentine Republic, pursuant to Resolution No. 040-2002/CDS-INDECOPI.

I. FACTS

(a) Investigation into allegedly dumped imports of vegetable oils from the Argentine Republic into the Eastern Region of Peru (File 012-2001/CDS-INDECOPI)

On 21 September 2001, the Peruvian firm Industrias del Espino S.A. requested that the Dumping and Subsidies Commission of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) initiate an investigation into allegedly dumped imports of sunflower and soya vegetable oils and mixtures thereof into the Eastern Region of Peru from both the Argentine Republic and the Federative Republic of Brazil. This investigation was initiated on 29 November 2001 pursuant to Resolution No. 029-2001/CDS-INDECOPI, published in the Official Journal "*El Peruano*" on 9 December 2001.

By way of Resolution No. 016-2002-CDS of 9 April 2002, published in the Official Journal "*El Peruano*" on 17 April 2002, INDECOPI ordered the application of provisional anti-dumping duties in the region of 73 per cent on imports of soya-bean oil from an Argentine company.

(b) Imposition of a provisional measure for alleged domestic dumping on imports of vegetable oils from the Argentine Republic (File 015-2001-CDS)

On 18 December 2001, Peru's National Association of Manufacturers (Sociedad Nacional de Industrias - SNI), on behalf of the company Alicorp S.A., requested the initiation of an investigation

into the allegedly dumped imports - at national level - of sunflower and soya vegetable oils and mixtures thereof from the Argentine Republic. The investigation was initiated on 21 February 2002 with the promulgation of Resolution No. 009-2002/CDS - INDECOPI.

On 24 July 2002, by way of Resolution 040-2002/CDS-INDECOPI, INDECOPI ordered the application of provisional anti-dumping duties of 36 per cent on the f.o.b. value of the exports of four Argentine companies.

- **It should be noted that both investigations relate to the same products and the same Argentine companies. Likewise, the evidence submitted by the petitioner in its request for the initiation of a regional dumping investigation was the same as that submitted in relation to the national dumping investigation**.

II. ALLEGATIONS

(a) Investigation into allegedly dumped imports of vegetable oils from the Argentine Republic into the Eastern Region of Peru (File 012-2001/CDS-INDECOPI)

1. The application submitted by Industrias del Espino S.A. for the initiation of an investigation did not include evidence of dumping, injury or a causal link.

2. The Investigating Authority, INDECOPI, did not examine the accuracy and adequacy of the evidence provided in the application to determine whether there was sufficient evidence to justify the initiation of an investigation.

3. INDECOPI should have refrained from initiating the investigation on the grounds of insufficient evidence of dumping, injury or a causal link.

4. The Implementing Authority defined the Eastern Region of Peru as an isolated market and the regional industry without having duly complied with the requirements laid down in the Agreement, in particular, that the demand in that market not be to any substantial degree supplied by producers of oils located in another territory, and that there be a concentration of Argentine imports into the Eastern Region of Peru.

5. The Implementing Authority did not take into consideration the information furnished by the company to which provisional duties were applied concerning the fact that the product under investigation was not sold on the domestic market. It thereby failed to comply with the provisions of Annex II of the Anti-Dumping Agreement on the use of information from a secondary source to determine the normal value.

6. INDECOPI incorrectly determined the normal value since it failed both to take into consideration the fact that the company did not sell the product under investigation on the domestic market and to make a comparison with a comparable price for sales of the like product to third markets.

7. INDECOPI failed to make a fair comparison between the normal value and the export price.

8. The preliminary determination of injury by INDECOPI was not based on positive evidence. Neither did it involve an objective examination of the volume of dumped imports, the effect of these imports on prices in the domestic market for like products or the consequent impact of these imports on regional producers of palm oil.

9. INDECOPI preliminarily determined the existence of injury even without having proved the existence of a significant increase in Argentine imports either in absolute terms or relative to regional production or consumption.

10. INDECOPI did not evaluate all relevant economic factors and indices having a bearing on the state of the industry.

11. INDECOPI failed to demonstrate a causal link between the allegedly dumped imports and the alleged injury to the regional industry. Neither did the Authority examine factors other than the imports which at the same time could have caused injury to the regional industry.

12. INDECOPI did not comply with the requirements laid down in the Agreement as regards the decision to apply preliminary measures, given that the investigation was not initiated in compliance with the Agreement, the preliminary affirmative existence of injury to the regional industry was not proved and the measure was not necessary to prevent injury being caused during the investigation.

13. The public notice of the preliminary determination does not set forth in sufficient detail the findings and conclusions on all issues of fact and law reached by the Authority which justify the application of a preliminary measure.

In the light of the above considerations, Argentina considers the investigation initiated and the preliminary determination of dumping, injury and a causal link which led to the application of a provisional measure to be inconsistent with Peru's obligations under the following provisions of the Anti-Dumping Agreement and the GATT 1994:

- Articles 5.2, 5.3 and 5.8;
- Article 4.1(ii);
- Article 6.8 and Annex II;
- Articles 2.2 and 2.4;
- Articles 3.1, 3.2, 3.4 and 3.5;
- Article 7;
- Article 12.2.1; and
- Article VI of the GATT 1994.

(b) Imposition of a provisional measure for alleged national dumping on imports of vegetable oils from the Argentine Republic (File 015-2001-CDS)

1. The application submitted by Peru's National Association of Manufacturers, on behalf of Alicorp S.A., for the initiation of an investigation did not include evidence of dumping, injury or a causal link.

2. The Investigating Authority, INDECOPI, did not examine the accuracy and adequacy of the evidence provided in the application to determine whether there was sufficient evidence to justify the initiation of an investigation.

3. INDECOPI should have refrained from initiating the investigation on the grounds of insufficient evidence of dumping, injury or a causal link.

4. The Implementing Authority did not take into consideration the information furnished by the companies as regards evidence relating to the normal value and export price. It thereby failed to comply with the provisions of Annex II of the Anti-Dumping Agreement on the use of information from a secondary source to determine the normal value.

5. INDECOPI incorrectly determined the normal value for one company since it failed both to take into consideration the fact that that company did not sell the product under investigation on the domestic market and to make a comparison with a comparable price for sales of the like product to third markets.

6. INDECOPI failed to make a fair comparison between the export price and the normal value.

7. The preliminary determination of injury by INDECOPI was not based on positive evidence. Neither did it involve an objective examination of the volume of dumped imports, the effect of these imports on prices in the domestic market for like products or the consequent impact of these imports on domestic producers.

8. INDECOPI preliminarily determined the existence of injury even without having proved the existence of a significant increase in imports either in absolute terms or relative to domestic production or consumption.

9. INDECOPI did not evaluate all relevant economic factors and indices having a bearing on the state of the industry.

10. INDECOPI failed to demonstrate a causal link between the allegedly dumped imports and the alleged injury to the domestic industry. Neither did the Authority examine factors other than the imports which at the same time could have caused injury to the domestic industry.

11. INDECOPI did not comply with the requirements laid down in the Agreement as regards the decision to apply preliminary measures, given that the investigation was not initiated in compliance with the Agreement, the preliminary affirmative existence of injury to the domestic industry was not proved and the measure was not necessary to prevent injury being caused during the investigation.

12. The public notice of the preliminary determination does not set forth in sufficient detail the findings and conclusions on all issues of fact and law reached by the Authority which justify the application of a preliminary measure.

In the light of the above considerations, Argentina considers the measure imposing provisional anti-dumping duties to be inconsistent with Peru's obligations under the following provisions of the Anti-Dumping Agreement and the GATT 1994:

- Articles 5.2, 5.3 and 5.8;
- Article 6.8 and Annex II;
- Articles 2.2 and 2.4;
- Articles 3.1, 3.2, 3.4 and 3.5;
- Article 7;
- Article 12.2.1; and
- Article VI of the GATT 1994.

In these circumstances, the Republic of Argentina requests consultations with the Republic of Peru under Article XXIII:1 of the GATT 1994, Article 4 of the DSU and the respective provisions of the Anti-Dumping Agreement, at a mutually agreed date and place.