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## UNITED STATES – ANTI-DUMPING AND COUNTERVAILING DUTIES ON RIPE OLIVES FROM SPAIN

### REQUEST FOR CONSULTATIONS BY THE EUROPEAN UNION

The following communication, dated 28 January 2019, from the delegation of the European Union to the delegation of the United States, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the United States (US) pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) concerning the imposition of countervailing (CVD) and anti-dumping (AD) duties on ripe olives from Spain.

The measures that the EU would like to address in these consultations are the CVD and AD duties on ripe olives from Spain, as well as the US legislation that was the basis for the imposition of these duties. These measures include and are evidenced by the following instruments / documents:

- CVD and AD duty orders issued on 1 August 2018 by the US Department of Commerce (DOC) and applicable as from the same date,<sup>1</sup> following final determinations by the DOC<sup>2</sup> and by the US International Trade Commission (ITC);<sup>3</sup> and
- Section 771B of the Tariff Act of 1930.<sup>4</sup>

The EU is concerned that these measures appear to be inconsistent with:

- Articles 19.1, 19.3, 19.4, 1.2, 2.1, 2.1(a), (b) and (c), 2.2 and 2.4 of the SCM Agreement, because the US is countervailing subsidy programmes and subsidies that are not specific, including but not limited to Pillar I payments under the EU Common Agricultural Policy. These subsidy measures do not explicitly limit access to certain enterprises, but operate on the basis of objective criteria or conditions that are automatic and strictly adhered to, as well as being clearly spelled out in official documents. There are no reasons to believe that these subsidy measures are in fact specific, such as through the use of a programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts to certain enterprises, or the manner in which discretion has been exercised. No account or proper account has been taken of the extent of diversification of economic activities within the jurisdiction of the granting authority or the

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<sup>1</sup> Ripe Olives from Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 83 FR 37469, 1 August 2018; and Ripe Olives from Spain: Antidumping Duty Order, 83 FR 37467, 1 August 2018

<sup>2</sup> Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination, C-469-818, DOC, 11 June 2018, published in 83 FR 28186, 18 June 2018; and Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value, A-469-817, DOC, 11 June 2018, published in 83 FR 28193, 18 June 2018

<sup>3</sup> Ripe Olives from Spain, Investigation Nos 701-TA-582 and 731-TA-1377 (Final), US ITC, July 2018

<sup>4</sup> 19 U.S.C. § 1677-2

length of time during which the programmes have been in operation. The subsidy measures are not limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority. The determinations of specificity are not clearly substantiated on the basis of positive evidence. The US is therefore imposing countervailing duties on the import of ripe olives that are not in accordance with the above provisions and that are inappropriate and in excess of the amount of any subsidy;

- Articles 1.1(b), 10, 14, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994, because, with respect to these subsidy measures, the DOC did not carry out a pass-through analysis to assess to what extent subsidies to olive growers, the direct recipients of the benefit conferred by the subsidy programmes and the subsidies, pass-through to the processors of ripe olives. The US is therefore imposing countervailing duties on the import of ripe olives that are not in accordance with the above provisions and that are inappropriate and in excess of the amount of any subsidy found to exist with respect to ripe olives. In addition, Section 771B of the Tariff Act of 1930, which mandates this approach, appears to be as such inconsistent with the same provisions;
- Article VI:3 of the GATT 1994, and Articles 15.1, 15.2 and 15.5 of the SCM Agreement, as a consequence of one or both of the preceding points and because, in any event, the ITC did not properly factor into the determination of injury the evolution in the volume of subsidized imports, or the effect of the subsidised imports on prices, and did not demonstrate the required causal relationship between subsidized imports and injury to the domestic industry, also taking into account non-attribution factors. The injury determination is not based on positive evidence and does not involve an objective examination of the volume of the subsidized imports and their effects on prices, and the consequent impact on the domestic producers. For the same reasons, the dumping measures appear to be inconsistent with Articles VI:1 and VI:2 of the GATT 1994, and Articles 3.1, 3.2 and 3.5 of the Anti-Dumping Agreement; and
- Article VI:3 of the GATT 1994, and Articles 1.1(a), 1.1(b), 10, 14, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994, because the calculation of the final subsidy rate for Aceitunas Guadalquivir was erroneously based on the company's total amount of purchases of raw olives, regardless of the processed olive product for which the raw olives were used. This means that the determinations regarding the amount of financial contribution and benefit, "pass-through", and the amount of the countervailing duties imposed are erroneous, inappropriate and excessive. Furthermore, the interested party was not given notice of the information required or ample opportunity to present evidence considered relevant, as required by Article 12.1; the authorities did not properly satisfy themselves as to the accuracy of the relevant information, as required by Article 12.5; and the authorities failed to inform all interested parties of the essential facts, as required by Article 12.8. In addition, the "all others" rate determined by the authorities is inconsistent with the same provisions for the same reasons.

The EU reserves the right to address additional measures and claims under other provisions of the covered agreements regarding the above matters during the course of the consultations.

The EU looks forward to receiving the US' reply to this request and to finding a mutually convenient date and place for the consultations.

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