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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

Original: Spanish

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

PERU

Supplement

The following communication, dated 13 January 2021, is being circulated at the request of the delegation of Peru.

The Permanent Mission of Peru to the International Organizations at Geneva presents its compliments to the Secretariat of the World Trade Organization (Rules Division) and refers to its notification obligations pursuant to Article 18.5 of the Anti-Dumping Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) and Article 32.6 of the Agreement on Subsidies and Countervailing Measures.

In this regard, the Permanent Mission is pleased to submit Law No. 31089 "Law combatting the circumvention of anti-dumping and countervailing measures", issued by the Congress of the Republic of Peru on 11 December 2020.

The text of the aforementioned Law is available at:

<https://elperuano.pe/NormasElperuano/2020/12/12/1911378-1/1911378-1.htm>

Law combatting the circumvention of anti-dumping and countervailing measures

LAW NO. 31089

PRESIDENT A. I. OF THE CONGRESS OF THE REPUBLIC

WHEREAS:

THE CONGRESS OF THE REPUBLIC;

Has enacted the following Law:

**LAW COMBATTING THE CIRCUMVENTION OF ANTI-DUMPING AND
COUNTERVAILING MEASURES**

Article 1. Purpose of the Law

The purpose of this Law is to combat circumvention, in order to effectively counteract the distortions caused by this unfair practice, and ensure greater balance in the process to integrate Peru into world trade.

Article 2. Definition of circumvention

Circumvention is any circumstance that implies a change in the pattern of imports, with the purpose of evading or avoiding the payment of anti-dumping or countervailing duties imposed to correct distortions in the market that cause injury to the domestic industry.

Article 3. Competency

The Commission on Dumping, Subsidies and the Elimination of Non-Tariff Trade Barriers of the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI), hereinafter the Commission, is empowered to extend the scope of anti-dumping and countervailing duties on imports of a product that is similar to the product under investigation, whether it is from a third country or a customs territory, or on parts of that product, where the circumvention of definitive duties has been found to exist.

Article 4. Indicative list of circumvention practices and the determination thereof

The main forms of circumvention are:

- (a) The importation of parts or components from the customs territory or country of origin of the final product subject to definitive anti-dumping or countervailing duties, with the aim of assembling or finishing the product in Peru.
- (b) The importation of a product assembled or finished in a third country or customs territory with parts or components originating in a third country or customs territory subject to definitive anti-dumping or countervailing duties.
- (c) The importation of a product subject to duties with minor modifications or alterations that do not imply a change in the essential character of the product.
- (d) The reorganization of sales channels to allow for a product subject to duties to be imported by producers or exporters benefiting from a lower individual duty rate or to whom duties have not been applied.

(e) The importation of a product subject to duties which has not demonstrated compliance with the relevant regulations, and which originates in a country or customs territory other than the country or customs territory of the imports subject to duties.

(f) Any other conduct the purpose of which is to avoid payment of an anti-dumping or countervailing duty.

To determine the practice described in subparagraph (f), the following must be verified: (i) there is a change in the pattern of trade between a third country or customs territory and Peru, or between the country or customs territory subject to measures and Peru, or between individual enterprises in the country or customs territory subject to measures and Peru; (ii) there is no economic justification for the change other than the imposition of the duty; and (iii) the circumvention has a negative impact on the remedial effects of the duties in terms of the prices and quantities of the imported product subject to measures.

Article 5. Requirements for requests to initiate a circumvention review

Requests to initiate a circumvention review must contain the following:

(a) A detailed description and supporting evidence of the form of circumvention in accordance with the information as is reasonably available to the applicant.

(b) Information on the circumvented product and the existence of changes in trade flows between a third country or customs territory and Peru, or between the country or customs territory subject to measures and Peru, or between individual enterprises in the country or customs territory subject to measures and Peru.

(c) Evidence that the practice reported has negative repercussions on the remedial effects of the duties in terms of the prices and quantities of the imported product subject to measures.

(d) Evidence, in the case of alleged circumvention of anti-dumping duties, that the product is exported to Peru at prices lower than the normal value established in the original investigation or the previous review of the duties circumvented.

Article 6. Initiation of the circumvention review procedure

The procedure for the investigation of alleged circumvention shall be initiated *ex officio* or at the request of the interested party. In all cases, the Commission shall initiate the procedure, by means of a reasoned decision, where it has sufficient evidence of the alleged circumvention.

Article 7. Resolution initiating the review procedure

The resolution initiating the review procedure shall be:

(a) published in the Official Journal *El Peruano* once; and

(b) notified to: importers and exporters of the products under investigation identified by the Commission through public information sources; local producers allegedly affected by such imports; and the Government of the exporting country.

Before or during the investigation, the Commission may request the National Supervisory Authority for Customs and Tax Administration (SUNAT) to provide information on the volume, value and origin of the imported products that are allegedly circumventing the existing duties.

Article 8. Time frames for the circumvention review procedure

The following time frames shall apply for the circumvention review procedure:

(a) The evidentiary period of the procedure shall last six (6) months calculated from the publication of the resolution initiating the procedure, which may be extended by three (3) additional months. During the evidentiary period, the Commission may convene a hearing, upon the request of the interested party.

(b) Within thirty (30) calendar days after the conclusion of the evidentiary period, the Commission shall issue the document of Essential Facts, forming the basis for its final resolution, which shall be notified to the parties participating in the proceedings within five (5) working days. The parties may submit their comments on the Essential Facts within a period of no more than fifteen (15) calendar days calculated from the day following their notification.

(c) Following expiry of the period for receipt of comments on the Essential Facts, the Commission shall adopt a final resolution within a period of twenty-five (25) working days.

(d) The procedure shall be concluded within a maximum of twelve (12) months calculated from the publication in the Official Journal El Peruano of the resolution initiating the procedure.

(e) Where the Commission determines the existence of circumvention and extends the application of the relevant duties, this resolution shall take effect as from the date on which guarantees were requested.

Article 9. Guarantees

During the procedure, and no earlier than sixty (60) days following the date of the initiation, the Commission may, by means of a reasoned decision, authorize the customs authorities, for the duration of the procedure, to require importers of the product under review, in order for them to withdraw their goods, to provide a bank guarantee letter as security for the payment of the anti-dumping or countervailing duties established by the procedure. Where the Commission does not determine the existence of circumvention, it shall order the release of the guarantees provided by importers.

Article 10. Appeals

An appeal may only be lodged against the final resolution issued by the Commission within fifteen (15) working days calculated from the notification or publication of the final resolution, where applicable.

If an appeal is lodged, the Commission shall refer the case to the Chamber for the Defence of Competition of the Tribunal of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) within a maximum of ten (10) working days. The Chamber of the Tribunal shall resolve the appeal within a maximum of four (4) months.

Article 11. Residual rule

The circumvention review procedure established in this Law is governed, where applicable, by the provisions established in Articles 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57 of Supreme Decree No. 006-2003-PCM, which regulates the rules provided for in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture.

FINAL SUPPLEMENTARY PROVISION

SOLE PROVISION. Regulatory adaptation

The Executive Branch is responsible for adapting the regulatory provisions that conflict with this Law.

THEREFORE:

The Law having been reconsidered by the Congress of the Republic, with an emphasis placed on the approved text at the session of the Permanent Commission held on 26 June 2018, in accordance with Article 108 of the Political Constitution of Peru, I order that it be published and enforced.

In Lima, on 11 December 2020.

MIRTHA ESTHER VÁSQUEZ CHUQUILIN

President a.i. of the Congress of the Republic

LUIS ANDRÉS ROEL ALVA

Second Vice-President of the Congress of the Republic
