



12 April 2016

(16-2098)

Page: 1/3

Original: Spanish

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

**UNDERSTANDING BETWEEN GUATEMALA AND PERU REGARDING PROCEDURES
UNDER ARTICLES 21 AND 22 OF THE DSU**

The following communication, dated 11 April 2016, from the delegation of Guatemala and the delegation of Peru to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

Understanding between Guatemala and Peru regarding procedures
under Articles 21 and 22 of the DSU

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *Peru — Additional Duty on Imports of Certain Agricultural Products* (WT/DS457) at its meeting of 31 July 2015.

Subsequently, pursuant to Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), the arbitrator determined that the reasonable period of time for implementing the recommendations and rulings of the DSB should be seven months and 29 days, a period that expired on 29 March 2016.¹

Guatemala and Peru have therefore agreed on the following procedures for the exclusive purpose of sequencing proceedings under Articles 21.5 and 22.6 of the DSU regarding the compliance measures, if any, taken by Peru to implement the recommendations and rulings of the Panel and the Appellate Body:

1. Should Guatemala consider that the situation described in Article 21.5 of the DSU exists, it will, at a time it deems appropriate, request consultations. The Parties to the dispute agree to hold those consultations within 15 days from the date of circulation of the request. After this 15-day period has elapsed, Guatemala may, at any time, request the establishment of a panel pursuant to Article 21.5 of the DSU.
2. Should Guatemala request the establishment of a panel under Article 21.5, Peru will not object to the panel being established at the first meeting of the DSB at which it appears as an item on the agenda.
3. The Parties to the dispute will cooperate to enable the DSU Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to DSU Article 12.12.

¹ Award of the Arbitrator under Article 21.3(c) of the DSU, *Peru - Additional Duty on Imports of Certain Agricultural Products – Arbitration under Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes*, WT/DS457/15, para. 4.1.

4. Either Party to the dispute may request the DSB to adopt the report of the DSU Article 21.5 panel at a DSB meeting held at least 30 days after the circulation of the report to Members, unless either Party appeals the report to the Appellate Body.
5. In the event of an appeal of the DSU Article 21.5 panel report, the Parties to the dispute will cooperate to enable the Appellate Body to circulate its report to the Members within 90 days from the date of notification of the appeal to the DSB.
6. In the event of an appeal, either Party to the dispute may request the DSB to adopt the reports of the Appellate Body and of the DSU Article 21.5 panel (as modified or upheld by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to Members.
7. In the event that the DSB, following a proceeding under Article 21.5 of the DSU, rules that a measure taken to comply does not exist or is inconsistent with a covered agreement, Guatemala may request authorization to suspend the application to Peru of concessions or other obligations under the covered agreements pursuant to Article 22.2 of the DSU. Peru will not assert that Guatemala is precluded from obtaining such DSB authorization on the grounds that the request was made outside the 30-day time-period specified in DSU Article 22.6. This is without prejudice to Peru's right to refer the matter to arbitration under Article 22.6 of the DSU.
8. Should Guatemala request authorization to suspend the application to Peru of concessions or other obligations pursuant to Article 22 of the DSU, Peru may object, under Article 22.6 of the DSU, to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed. Where such an objection is made, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU.
9. The Parties will cooperate to enable the DSU Article 22.6 arbitrator to circulate its decision within 60 days of the referral to arbitration.
10. If any of the original panelist is not available for either the DSU Article 21.5 panel or the DSU Article 22.6 arbitration (or both), the Parties to the dispute will promptly consult on a replacement, and either Party may request the Director-General of the WTO to designate, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, or becomes unavailable to serve, the Parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
11. The Parties to the dispute will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the Parties consider that a procedural aspect has not been properly addressed in these procedures, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.
12. The Parties to the dispute agree that this Understanding applies exclusively to this dispute and affects only the sequencing of proceedings under Articles 21.5 and 22.6 of the DSU, and that it in no way affects other rights of either Party under Articles 21 and 22 of the DSU.

Signed in Geneva, 8 April 2016.

For Guatemala

For Peru

(Signed)
Eduardo Sperisen-Yurt
Ambassador
Permanent Representative of Guatemala

(Signed)
Luis Enrique Chávez Basagoitia
Ambassador
Permanent Representative of Peru
