



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

**NOTIFICATION OF AN APPEAL BY PERU  
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES  
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),  
AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 25 March 2015, from the delegation of Peru, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 20 of the Working Procedures for Appellate Review ("Working Procedures"), Peru hereby notifies its decision to appeal certain issues of law and legal interpretation in the Report of the Panel in *Peru – Additional Duty on Imports of Certain Agricultural Products* (WT/DS457) (the "Panel Report").

2. Peru appeals, and requests the Appellate Body to reverse, modify or declare moot and of no legal effect the findings, conclusions and recommendations of the Panel with respect to the following errors of law and legal interpretations contained in the Panel Report:<sup>1</sup>

**I. The Panel Erred in Law by Failing to Find that Guatemala Acted Inconsistently with Its Good Faith Obligations under DSU Articles 3.7 and 3.10**

3. Peru seeks review by the Appellate Body of the Panel's findings and conclusions that there was "no evidence that Guatemala brought these proceedings in a manner contrary to good faith" within the meaning of DSU Articles 3.7 and 3.10, and its concomitant conclusion that "there is therefore no reason for the Panel to refrain from assessing the claims put forward by Guatemala".<sup>2</sup>

4. The Panel's errors of law and legal interpretation include its assumption that the legal status of the Peru-Guatemala Free Trade Agreement ("FTA") was dispositive to its ruling on good faith. The status of the FTA has no bearing on the issue of whether Guatemala acted contrary to its good faith obligations under DSU Article 3.7 and 3.10. The Panel's interpretation of the requirements of DSU Articles 3.7 and 3.10 was thus fundamentally flawed.

5. Accordingly, Peru requests the Appellate Body to declare moot and with no legal effect the Panel's findings in paragraphs 7.75, 7.84, 7.88, 7.91-7.93, 7.96, 7.526-7.528, and to *reverse* the Panel's conclusion in paragraphs 8.1(a), 8.1(f), and 8.8. Peru also respectfully requests the Appellate Body to complete the analysis and find that Guatemala has acted inconsistently with its obligations under DSU Articles 3.7 and 3.10.

<sup>1</sup> Pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of Peru to refer to other paragraphs of the Panel Report in the context of its appeal.

<sup>2</sup> See Panel Report, paras. 7.66-7.96 and 8.1(a).

## **II. The Panel Erred in Law by Finding that Peru Acted Inconsistently with Article 4.2 of the Agreement on Agriculture**

6. Peru seeks review of the Panel's findings and conclusions that the duties resulting from the Price Range System ("PRS") constitute variable import levies or share sufficient characteristics with variable import levies to be considered a border measure similar to a variable import levy, within the meaning of footnote 1 to the Agreement on Agriculture<sup>3</sup>, and that by maintaining such measures Peru is acting inconsistently with its obligations under Article 4.2 of the Agreement on Agriculture.<sup>4</sup>

7. The Panel's errors of law and legal interpretation include:

- The Panel erred in its interpretation of Article 4.2 of the Agreement on Agriculture by failing to take into account the FTA as a relevant rule of international law within the meaning of Article 31(3)(c) of the Vienna Convention on the Law of Treaties ("Vienna Convention")<sup>5</sup>;
- The Panel erred in its interpretation of Article 4.2 of the Agreement on Agriculture by failing to take into account Articles 20 and 45 of the International Law Commission (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts ("ILC Articles") as relevant rules of international law within the meaning of Article 31(3)(c) of the Vienna Convention;
- The Panel erred in its interpretation of Article 4.2 of the Agreement on Agriculture by failing to take into account the FTA as a "subsequent agreement between the parties" within the meaning of Article 31(3)(a) of the Vienna Convention; and
- The Panel erred in finding that the measure was a variable import levy or similar measure and thus a violation of Article 4.2 of the Agreement on Agriculture.<sup>6</sup> In addition, the Panel failed to make an objective assessment of the matter before it, as required by DSU Article 11.

8. Accordingly, Peru requests the Appellate Body to declare moot and with no legal effect the Panel's findings in paragraphs 7.316, 7.321, 7.324-7.325, 7.328, 7.334-7.340, 7.345-7.347, 7.349, 7.350-7.352, 7.371-7.374, and 7.526-7.528 and to reverse the Panel's conclusions in paragraph 8.1(b) and 8.1(d), 8.1(f), and 8.8.

## **III. The Panel Erred in Law by Finding that Peru Acted Inconsistently with Article II:1(b) of the GATT 1994**

9. Peru seeks review of the Panel's findings and conclusions that the additional duties resulting from the PRS constitute "other duties or charges ... imposed on or in connection with the importation", within the meaning of the second sentence of GATT Article II:1(b), and that in applying measures, Peru acted inconsistently with its obligations under the second sentence of Article II:1(b) of the GATT 1994.<sup>7</sup>

10. The Panel's errors of law and legal interpretation include:

- The Panel erred in its interpretation of the second sentence of GATT Article II:1(b) by failing to take into account the FTA as a relevant rule of international law within the meaning of Article 31(3)(c) of the Vienna Convention<sup>8</sup>;
- The Panel erred in its interpretation of the second sentence of GATT Article II:1(b) by failing to take into account Articles 20 and 45 of the ILC Articles as relevant rules of international law within the meaning of Article 31(3)(c) of the Vienna Convention;

<sup>3</sup> Panel Report, para. 8.1(b).

<sup>4</sup> Panel Report, para. 8.1(d).

<sup>5</sup> See Panel Report, paras. 7.525-7.528 and 8.1(f).

<sup>6</sup> See Panel Report, paras. 7.371-7.372 and 8.1(b)-(d).

<sup>7</sup> Panel Report, para. 8.1(e).

<sup>8</sup> Panel Report, paras. 7.525-7.528 and 8.1(e) and (f).

- The Panel erred in its interpretation of the second sentence of GATT Article II:1(b) by failing to take into account the FTA as a "subsequent agreement between the parties" within the meaning of Article 31(3)(a) of the Vienna Convention; and
- The Panel erred in finding that the additional duties were other duties or charges and thus a violation of the second sentence of GATT Article II:1(b). In addition, the Panel failed to make an objective assessment of the matter before it, as required by DSU Article 11.

11. Accordingly, Peru requests the Appellate Body to declare the Panel's findings in paragraphs 7.423, 7.425-7.426, 7.430-7.432, 7.526-7.528, 8.1(e), 8.1(f), and 8.8 to be moot and of no legal effect.

12. The reasons for Peru's appeal are further elaborated in its submission to the Appellate Body.

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