

# **WORLD TRADE ORGANIZATION**

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**Committee on Anti-Dumping Practices  
Informal Group on Anti-Circumvention**

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## **COMMUNICATION BY PERU**

The following communication, dated 28 January 2002, has been received from the Permanent Mission of Peru.

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The Permanent Mission of Peru to the International Organizations with headquarters in Geneva presents its compliments to the Secretariat of the World Trade Organization – Rules Division and hereby submits a paper by Peru to the Group on Anti-Circumvention of the WTO Committee on Anti-Dumping Practices.

This paper provides an insight into the experience gained by Peru and highlights factors that should be taken into consideration in reviewing practices that might constitute circumvention of anti-dumping duty. Replies to the first two questions raised by the Members of the Group, i.e. "What constitutes circumvention?" and "What is being done by Members confronted with what they consider to be circumvention?", are given below.

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### **I. INTRODUCTION**

The Ministerial Decision on Circumvention was adopted by governments in Marrakesh as a result of the Uruguay Round of Multilateral Trade Negotiations. This Decision recognizes the desirability of applying uniform rules in this area as swiftly as possible, in order to prevent circumvention of anti-dumping measures.

As a contribution to the ongoing debate on the issue, Peru wishes to offer a few comments and details of its experience in the matter.

### **II. TOPIC 1 – WHAT CONSTITUTES CIRCUMVENTION?**

The term "circumvention" derives from the verb "circumvent". In the present context, it may be defined as an act or acts the purpose or objective of which is to avoid, by one means or another, the payment of anti-dumping duty.

In order to determine whether the purpose of a given act is to evade anti-dumping duty, we consider it necessary to discuss – in detail and on the basis of concrete examples – practices such as the following:

- Minor alterations of merchandise;

- export of components and spare parts;
- third country or importing country assembly;
- third country transshipment;
- customs fraud.

Factors to be considered in determining whether a practice is aimed at evading anti-dumping duty include the following:

- The moment in which the act in question occurred;
- trade trends;
- investments made.

We believe that the way to clarify whether a practice constitutes circumvention is to obtain detailed explanations of how the practice came about, by way of concrete examples and experience acquired by Members.

### **III. TOPIC 2 – WHAT IS BEING DONE BY MEMBERS CONFRONTED WITH WHAT THEY CONSIDER TO BE CIRCUMVENTION?**

Peru has taken the following action in this respect.

#### **1. Textile imports from the People's Republic of China**

In 1995<sup>1</sup>, it was decided to levy definitive anti-dumping duties on imports of cotton fabric and mixed (10-50.97%) fabrics, originating in and/or coming from the People's Republic of China.

In order to prevent possible circumvention through false statements as to the country or place of origin of goods subject to anti-dumping duties, Peru has passed legislation requiring the submission of a certificate of origin. Thus, there are general rules<sup>2</sup> for determining the origin of imports in cases where it is decided to apply anti-dumping and/or countervailing duties, laying down a series of minimum requirements to be met by a certificate of origin. Specific rules<sup>3</sup> were subsequently established in order to prevent goods subject to anti-dumping duties from being imported under other tariff headings, stipulating mandatory presentation of certificates of origin for imports subject to anti-dumping measures and thus preventing any circumvention through fraudulent customs declarations.

#### **2. Imports of footwear from the People's Republic of China, Chinese Taipei and the Republic of Indonesia**

- **Opening of an investigation against the People's Republic of China and application of definitive anti-dumping duties**

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<sup>1</sup> Decision No. 005 99 INDECOPI/CDS.

<sup>2</sup> Supreme Decree No. 21-05-11 INCI.

<sup>3</sup> Supreme Decree No. 102-96 IMNCUDM.

By Decision No. 005-97-INDECOPI/CDS, published in the Official Gazette *El Peruano* on 15 and 16 March 1997, as amended by Decision No. 008-97-INDECOPI/CDS, published on 29 and 30 May 1997, the Anti-Dumping and Subsidies Control Commission<sup>4</sup> of the National Institute for the Defence of Competition and the Protection of Intellectual Property<sup>5</sup> ordered the application of definitive anti-dumping duties on footwear of specific sub-headings, originating in the People's Republic of China,<sup>6</sup> as specified in the aforementioned Decisions.

Between 1997 and 1998, imports from China dropped from 18.06 per cent in 1997 to 16.66 per cent in 1998, in terms of share of the total volume of imports, which was attributed to the levy of definitive anti-dumping duties. In 1998, however, imports from Chinese Taipei and Indonesia grew by 49.68 per cent and 283.33 per cent, respectively, increasing these countries' share of the total volume of imports.

- **Opening of an investigation against Chinese Taipei and application of definitive anti-dumping duties**

On 16 November 1998, the *Corporación del Cuero, Calzado y Afines* (Leather, Footwear and Leather Components Corporation), both in its own right and on behalf of the *Asociación de Pequeños y Medianos Fabricantes de Calzado*<sup>7</sup> (Small and Medium Footwear Manufacturers' Association), requested the Commission to commence investigation proceedings against the alleged dumping of imports of footwear from China, Chinese Taipei and Hong Kong, and to review specific anti-dumping duties in force on imports from China. It also requested the application of provisional duties, in accordance with the provisions of Article 22 of Supreme Decree No. 133-91 EF.

By Decision No. 004-1999/CDS-INDECOPI, the Commission ordered the opening of an investigation against the alleged dumping of imports of footwear from Chinese Taipei and China, and the review of specific definitive anti-dumping duties on imports of footwear from China. It declared the opening of an investigation regarding imports of footwear from Hong Kong to be unfounded.

By Decision No. 014-1999-INDECOPI/CDS, the Commission ordered the application of provisional anti-dumping duties on imports of footwear from Chinese Taipei.

By Decision No. 001-2000-INDECOPI/CDS, published in the Official Gazette *El Peruano* on 30 and 31 January 2000, the Commission ordered the imposition of definitive anti-dumping duties and the modification of specific anti-dumping duties in force on footwear of specific sub-headings, originating in and/or coming from China and Chinese Taipei, as specified in the aforementioned Decisions.

- **Opening of an investigation against imports of footwear originating in Indonesia and application of provisional anti-dumping duties**

In 1999 the total volume of imports fell to 3,942,951 pairs of footwear, i.e. a drop of 29.80 per cent as compared to 1998, which was attributed to the application, in May 1999, of provisional anti-dumping duties on imports from Chinese Taipei. In 2000, however, the total volume of imports rose by 61.91 per cent, i.e. 6,384,082 pairs of shoes, thus exceeding the figure registered in 1998.

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<sup>4</sup> Hereinafter referred to as "the Commission".

<sup>5</sup> Hereinafter "INDECOPI".

<sup>6</sup> Hereinafter "China".

<sup>7</sup> Hereinafter "APEMEFAC".

In 2000, imports from Indonesia increased by 78.71 per cent as compared to 1999, i.e. 2,888,535 pairs, raising Indonesia's share in the total volume of imports and making the country the largest foreign supplier of footwear.

By Decision No. 006-2001/CDS-INDECOPI of 24 April 2001, the Commission ordered the *ex officio* opening of investigation proceedings against the alleged dumping of imports of footwear originating in Indonesia and entering under sub-headings of tariff headings 6402, 6403, 6404 and 6405.

By Decision No. 024-2001/CDS-INDECOPI of 25 October 2001, the Commission ordered the imposition of provisional anti-dumping duties on imports of footwear originating in Indonesia and entering under sub-headings of tariff headings 6402, 6403, 6404 and 6405.

The proceedings have now reached the final stage. All interested parties have been informed of the essential facts that are being taken into consideration and that will constitute the grounds for the decision whether or not to impose definitive measures, and they have been asked to deliver their comments.

This might constitute an example of circumvention of initial anti-dumping duty by way of a change in "suppliers". Nevertheless, since countries other than China are involved, Peru deems it fitting to open a new investigation. In the case of Chinese Taipei, the investigation was initiated at the request of the domestic industry and was commenced *ex officio* in the case of Indonesian imports.

With regard to the above imports, the National Customs Administration has, moreover, notified problems with the tariff classification and declarations of origin.

It should be noted that anti-dumping duties on imports of footwear originating in China and Chinese Taipei were applied by country, not by exporter.

In short, it is impossible to ascertain whether the change in the origin of the imports is due to a change in "suppliers" or to customs fraud in the declaration of origin.<sup>8</sup>

#### **IV. SITUATIONS ARISING IN THE INVESTIGATION PROCEEDINGS THAT MIGHT CONSTITUTE CIRCUMVENTION BY WAY OF CUSTOMS FRAUD**

##### **1. Product classification**

INDECOPI has received a number of complaints from Peruvian firms reporting that the levy of anti-dumping duties on products entering under specific sub-headings has led to an increase in *like* products entering under other sub-headings. There are two possible reasons for this:

- (i) The products were incorrectly classified under other sub-headings with a view to evading the payment of anti-dumping duty.
- (ii) The products imported under other sub-headings were correctly classified, and the products in question are substitutes for those subject to duty.

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<sup>8</sup> Pursuant to Article 8(b) of Law No. 28461, the importing of goods supported by fraudulent documentation or falsified data as to the value, quality, quantity, weight, origin or other characteristics having a bearing on taxation or the application of anti-dumping or countervailing duties shall be deemed to be a customs offence punishable, as customs tax fraud, by fines and imprisonment.

In the first instance, the importer would be guilty of a customs offence punishable by law, while in the second the importer would merely be substituting a product subject to duty with a product not subject to duty, taking advantage of the definition of the product complained of or investigated that does not cover the imports in question.

## **2. Declaration of origin**

It has been noted that the imposition of anti-dumping duties on specific products leads to increased imports in such products from third countries. There are two possible reasons for this:

- (i) A false declaration in terms of the origin of the product.
- (ii) A diversion of trade whereby like products – but of different origin – are being imported.

In the first instance, the importer would be guilty of a customs offence punishable by law, while in the second the importer would merely be substituting a product subject to duty with a product of different origin that is not subject to anti-dumping duty.

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