

# WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/Q1/PER/8

G/SCM/Q1/PER/8

8 May 1998

(98-1845)

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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

#### Replies of Peru<sup>1</sup> to Questions from

#### Venezuela<sup>2</sup>

The following communication, dated 4 May 1998, has been received from the Permanent Mission of Peru.

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It should be pointed out that, by virtue of Legislative Decision 26407 published on 18 December 1994, the Peruvian Congress approved the Agreement Establishing the World Trade Organization and the Agreements contained in the Final Act of the Uruguay Round, and incorporated those texts in domestic Peruvian legislation. Accordingly, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures entered into force on 1 January 1995 and have the status of domestic law as their provisions are directly applicable in Peru.

Consequently, Peru enacted Supreme Decree 043-97-EF for the purpose of regulating the procedural and administrative aspects of the arrangements applicable to the conduct of investigations.

#### Question 1

#### Determination of the normal value in particular market situations

**Could Peru clarify what the special factors, referred to in Article 5 of its legislation, are which do not permit a proper comparison of prices?**

#### Reply

The domestic legislation is confined to regulating aspects not covered by the Anti-Dumping Agreement, thereby fulfilling a supplementary rule. Article 5 of Supreme Decree No. 043-97-EF regulates the application of Article 2.2 of the Anti-Dumping Agreement by establishing two hypotheses under which particular market situations would prevent a proper comparison, namely:

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<sup>1</sup>G/ADP/N/1/PER/1/Suppl.2 and G/SCM/N/1/PER/1/Suppl.2.

<sup>2</sup>G/ADP/Q1/PER/6-G/SCM/Q1/PER/6

1. The existence of tariff or para-tariff barriers such as technical requirements, quality controls, health formalities, registration of importers or exporters, restrictions on the use of foreign exchange, etc.
2. Other special factors in the domestic market of the country of origin, such as the existence of a centralized economy, an economy affected by hyperinflation, special trade treatment zones, etc.

## Question 2

### Initiation of the investigation

**Could Peru indicate at what moment and in what way the competent authority verifies the degree of support for or opposition to the application for an investigation submitted by the domestic industry?**

### Reply

Article 18 of Supreme Decree No. 043-97-EF states that an investigation to determine the existence of imports at dumped or subsidized prices shall be initiated upon a written application addressed to the Commission by an enterprise or group of enterprises accounting for at least 25 per cent of total domestic production of the product which is the subject of the complaint.

The degree of support is verified within 30 days from the date of submission of the application, in accordance with the provisions of Article 21 of the above-mentioned Supreme Decree 043-97-EF.

Under Peruvian law, once the investigation has been initiated, all the parties concerned by the complaint or parties with a share of the relevant market are entitled to present their arguments for or against the investigation. In both cases, the Commission will study the information used in support of such arguments.

Once the investigation procedure has been initiated, the Commission submits the relevant questionnaire, with a request for information, both to the trade association concerned and to the importers and exporters of the product under consideration.

## Question 3

**Article 18 of the Peruvian legislation provides that the application shall contain the information requested in the questionnaires. Could Peru explain to what these questionnaires connected with the application for an investigation refer?**

### Reply

The questionnaires connected with the application for an investigation refer to the minimum essential information required by the investigating authority, corresponding in this regard to the information described in Articles 5.2 and 11.2 of the Anti-Dumping and Subsidies Agreements, respectively.

Question 4

Calculating of time-limits

**Can Peru clarify whether the time-limits provided for throughout its legislation are calculated in market days or in continuous days?**

Reply

The time-limits expressed in days are calculated in market days, while those expressed in months are calculated on a date-to-date basis.

Question 5

Ex officio investigations

**Could Peru indicate in what circumstances an investigation would be initiated without a written application being made by the domestic industry?**

Reply

Article 19 of Supreme Decree No. 043-97-EF provides that the Commission may initiate an investigation into dumping or subsidization ex officio, under the circumstances laid down in Articles 5.6 and 11.6 of the Anti-Dumping and Subsidies Agreements, respectively.

Question 6

Hearings

**Could Peru indicate at what stage in the investigation the authority could hold the hearings of the interested parties, as provided for in Article 31?**

Reply

Once the investigation has been initiated, the Commission may convene hearings at the request of any of the interested parties or ex officio.

Question 7

Form and amount of the provisional measures

**Could Peru explain how the form and amount of the provisional measures would be established in accordance with the provisions of the Code of Civil Procedure, as set forth in Article 33 of the Peruvian legislation?**

Reply

The calculation of the amount of the provisional measures to be applied in both dumping and subsidization cases is governed by the provisions of the WTO Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures, as indicated in Article 42 of Supreme Decree 043-97-EF.

Article 33 of Decree 043-97-EF provides that the amount of the provisional measures and their implications for the investigation procedure shall be governed by the sole amended text of the Code of Civil Procedure.

The sole amended text of the Peruvian Code of Civil Procedure provides that the purpose of provisional measures is to verify the facts presented by the parties so as to ensure certainty on the part of the corresponding authority (in this case, the Dumping and Subsidies Commission) about the facts presented and provide a basis for its decisions. As can be observed, apart from establishing specific regulations for the anti-dumping or anti-subsidization procedure, the above-mentioned text sets out a general procedural principle which is included for the sake of procedural and technical coherence.

Accordingly, the above-mentioned Article 33 does not regulate the calculation of provisional duties or the form in which they are to be determined.

#### Question 8

##### Commitments

**Could Peru indicate if the commitments referred to in Article 34 *et seq* of its legislation would be accepted only when there has been a positive preliminary determination?**

##### Reply

The price undertakings regulated in Articles 34 *et seq* of Supreme Decree 043-97-EF may only be given once the corresponding investigation procedure has been initiated. However, pursuant to the provisions of Article 8.2 of the Anti-Dumping Agreement, as a precondition for seeking or accepting an undertaking, the Peruvian authorities require that there should be a preliminary affirmative determination of dumping or subsidization causing injury.

#### Question 9

##### Applications and appeals

**Could Peru clarify the difference between the applications for reconsideration and appeals, provided for in Article 49 of its legislation?**

##### Reply

These remedies lie against final decisions in administrative investigation proceedings.

An application for reconsideration may be lodged with the same body which issued the decision complained of, and must be supported by new documentary evidence. This remedy is optional and does not preclude submission of an appeal.

An appeal may be lodged with the body which issued the decision complained of, so that the case may be referred to the higher authority for a last-instance decision.

With regard to investigations into dumping and subsidization, the administrative body responsible for the investigation at first instance is the Dumping and Subsidies Commission. The Commission's decisions are appealable to the administrative authority of second instance, which in this case is the Court for the Defence of Competition and Intellectual Property (Competition Division), this being the last available administrative remedy.

The interested party may lodge an administrative challenge in the courts.

Question 10

Notification to the government of the exporting Member

**Could Peru indicate whether, after having received a duly documented application and before initiating the investigation, it will notify the situation in question to the government of the exporting Member?**

Reply

Peru abides by the procedure provided for in Article 5.5 of the Anti-Dumping Agreement, and accordingly informs the diplomatic mission of the exporting country about the presentation of the application.

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