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PERU – ADDITIONAL DUTY ON IMPORTS OF CERTAIN AGRICULTURAL PRODUCTS

REQUEST FOR CONSULTATIONS BY GUATEMALA

The following communication, dated 12 April 2013, from the delegation of Guatemala to the delegation of Peru and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My country's authorities have instructed me to request consultations with Peru, pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 19 of the Agreement on Agriculture, Article 19 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement), and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), with respect to the imposition by Peru of an "additional duty" on imports of certain agricultural products.

Pursuant to Article 4.4 of the DSU, I shall proceed to describe the reasons for this request, including identification of the measure at issue and an indication of the legal basis for the complaints.

I IDENTIFICATION OF THE MEASURE AT ISSUE

The measure at issue is the "additional duty" imposed by Peru on imports of certain agricultural products, such as rice, sugar, maize, milk and certain dairy products (hereinafter affected products). According to Guatemala's understanding, the additional duty is characterized by the following:

- (i) it consists of a specific levy "additional"¹ to the ordinary customs duty on imports of the affected products²;
- (ii) it applies to imports of the affected products "when the international reference prices of such products are below certain floor price levels, and tariff rebates [apply] when these reference prices are above certain ceiling price levels"³;
- (iii) the amount of the additional duty is specific and expressed in US dollars per tonne⁴;

¹ Article 1 of Supreme Decree No. 115-2001-EF of 21 June 2001 ("Supreme Decree No. 115-2001-EF").

² The ordinary customs duty is *ad valorem*. For all affected products the *ad valorem* duty is 0%, with the exception of products classified under tariff subheadings 1108.12.00.00, 1108.13.00.00 and 35.05.10.00.00, each of which is subject to a 6% *ad valorem* duty (2012 Customs Tariff, adopted by Supreme Decree No. 238-2011-EF of 24 December 2011).

³ Article 1 of Supreme Decree No. 115-2001-EF.

⁴ Article 8 of Supreme Decree No. 115-2001-EF.

- (iv) the amount varies periodically based on the determination of (i) an established additional duty or tariff rebate corresponding to a c.i.f reference price for each affected product, which is specified in a customs table updated on a semi-annual basis by the Central Reserve Bank and approved by the Ministry of the Economy and Finance and the Ministry of Agriculture⁵, and (ii) the c.i.f reference price for each affected product, which is determined every two weeks by the Ministry of the Economy and Finance (MEF)⁶;
- (v) it is payable upon importation of the affected products, together with the ordinary customs duty and other import taxes on the affected products.⁷

Guatemala hopes that Peru can provide it with a comprehensive and detailed explanation of the way in which this additional duty operates. In order to facilitate this type of explanation, Guatemala specifies that it is requesting these consultations concerning the additional duty as contemplated in the aforementioned legal instruments, as well as with respect to any other regulation, instruction, administrative or judicial practice, method of determination or calculation, or guideline amending, supplementing, complementing, developing, or in any case relating to the regulatory instruments expressly referred to in this request for consultations.

II LEGAL BASIS FOR THE COMPLAINTS

In Guatemala's view, the measure at issue would appear to be inconsistent with Peru's obligations under the Agreement Establishing the World Trade Organization (WTO Agreement), and in particular:

- (i) with Article 4.2 and footnote 1 of the Agreement on Agriculture, to the extent that the additional duty appears to constitute and encompass the elements of a "variable levy", a "minimum import price", or in any event a measure "similar" to the first two, within the meaning of footnote 1 of the Agreement on Agriculture;
- (ii) with the second sentence of Article II:1(b) of the GATT 1994, since the measure appears to constitute a duty or charge other than an ordinary customs duty, and was not in effect as at 15 April 1994⁸, nor does it appear to have been required on that date by any mandatory provision of Peruvian law; and, in any case, with paragraphs 1, 2, 3 and 4 of the Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994, since Peru appears not to have recorded this levy in its schedule of concessions as it should have done by 15 April 1994;
- (iii) with Article XI:1 of the GATT 1994, to the extent that imposition of the additional duty, coupled with the import prices, effectively results in the establishment of a system similar to that of minimum import prices; and
- (iv) with Articles 1, 2, 3, 5, 6 and 7 of the Customs Valuation Agreement, to the extent that the measure at issue appears to be inconsistent with the customs valuation methods prescribed in the above provisions, and could be construed as being established on the basis of "minimum customs values" or "arbitrary or fictitious values", within the meaning of Article 7.2(f) and (g) of the Customs Valuation Agreement.

⁵ Article 7 of Supreme Decree No. 115-2001-EF. The latest update of which Guatemala is aware is contained in Supreme Decree No. 293-2012-EF of 22 December 2012 and establishes the customs tables applicable for the period 1 January to 30 June 2013.

⁶ Article 4 of Supreme Decree No. 115-2001-EF. The latest update of which Guatemala is aware is contained in Deputy Ministerial Resolution No. 002-2013-EF/15.01 of 21 January 2013.

⁷ Paragraph 3(c) of National Technical Customs Department Circular No. INTA-CR 62-2002 of 26 August 2002.

⁸ Relevant date for the recording of "other duties and charges", in accordance with paragraph 2 of the Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994.

Guatemala advises that these consultations might give rise to other matters having legal implications that are not expressly stated in this request but relate to other obligations of Peru under the WTO Agreement, in particular obligations relating to access to markets for trade in goods, as provided in Article II:1(a) and II:1(b) and Article XI of the GATT 1994, and obligations regarding transparency in the implementation of measures affecting international trade in goods, as provided in Article X:1 and X:3(a) of the GATT 1994. With a view to facilitating a wide-ranging exchange of views, Guatemala emphasizes that, if such were to be the case, these matters would also be covered by the scope of this request for consultations.
