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**PERU - ANTI-DUMPING AND COUNTERVAILING MEASURES
ON BIODIESEL FROM ARGENTINA**

REQUEST FOR CONSULTATIONS BY ARGENTINA

The following communication, dated 2 September 2022, from the delegation of Argentina to the delegation of Peru, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Republic of Peru pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("**DSU**"), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("**GATT 1994**"), Articles 17.2 and 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("**Anti-Dumping Agreement**") and Article 30 of the Agreement on Subsidies and Countervailing Measures ("**SCM Agreement**") with respect to the anti-dumping and countervailing measures on imports of biodiesel (B100) originating in the Argentine Republic.

I.- Identification of the measures at issue

The anti-dumping and countervailing measures concerned are contained in the following instruments:

Measure 1: Imposition of definitive countervailing duties (original investigation).

- Resolution No. 011-2016/CDB-INDECOPI, published in the Official Journal *El Peruano* on 28 January 2016, which, on the basis of the conclusions of Report No. 007-2016/CDB-INDECOPI, stipulates the imposition of definitive countervailing duties on imports of biodiesel (B100) originating in Argentina, confirmed by Resolution No. 0144-2018/SDC-INDECOPI, published in the Official Journal *El Peruano* on 27 July 2018, and the underlying investigation, including the notice of initiation (Resolution No. 081-2014/CFD-INDECOPI, published in the Official Journal *El Peruano* on 28 July 2014).

Measure 2: Imposition of definitive anti-dumping duties (original investigation).

- Resolution No. 189-2016/CDB-INDECOPI, published in the Official Journal *El Peruano* on 25 October 2016, which stipulates the imposition of definitive anti-dumping duties on imports of biodiesel (B100) originating in the Argentine Republic, confirmed by Resolution No. 0145-2018/SDC-INDECOPI, published in the Official Journal *El Peruano* on 27 July 2018, and the underlying investigation, including the notice of initiation (Resolution No. 050-2015/CFD-INDECOPI, published in the Official Journal *El Peruano* on 26 April 2015).

These measures also include the final determinations in the changed circumstances and sunset reviews carried out by the Peruvian investigating authority, which are contained in:

Measure 3: Continued imposition of countervailing duties (changed circumstances review).

- Resolution No. 187-2021/CDB-INDECOPI, published in the Official Journal *El Peruano* on 16 June 2021, which extends the validity of the countervailing duties imposed by Resolution No. 011-2016/CDB-INDECOPI, confirmed by Resolution No. 144-2018-SDC-INDECOPI, on imports of biodiesel (B100) originating in Argentina, and the underlying review process,

including the notice of initiation (Resolution No. 165-2019/CDB-INDECOPI, published in the Official Journal *El Peruano* on 11 December 2019).

Measure 4: Continued imposition of anti-dumping duties (changed circumstances review).

- Resolution No. 182-2021/CDB-INDECOPI, published in the Official Journal *El Peruano* on 2 June 2021, which extends the validity of the definitive anti-dumping duties imposed by Resolution No. 189-2016/CDB-INDECOPI on imports of biodiesel (B100) originating in the Argentine Republic, and the underlying review process, including the notice of initiation (Resolution No. 166-2019/CDB-INDECOPI, published in the Official Journal *El Peruano* on 11 December 2019).

Measure 5: Continued imposition of countervailing duties (sunset review).

- Resolution No. 265-2021/CDB-INDECOPI, published in the Official Journal *El Peruano* on 3 November 2021, which extends for five years the countervailing duties imposed by Resolution No. 011-2016/CDB-INDECOPI on imports of biodiesel (B100) originating in Argentina, and the underlying review process, including the notice of initiation (Resolution No. 104-2020/CDB-INDECOPI, published in the Official Journal *El Peruano* on 10 September 2020).

Measure 6: Continued imposition of anti-dumping duties (sunset review).

- Resolution No. 266-2021/CDB-INDECOPI, published in the Official Journal *El Peruano* on 3 November 2021, which extends the validity of the definitive anti-dumping duties imposed by Resolution No. 189-2016/CDB-INDECOPI on imports of biodiesel (B100) originating in the Argentine Republic, and the underlying review process, including the notice of initiation (Resolution No. 105-2020/CDB-INDECOPI, published in the Official Journal *El Peruano* on 10 September 2020).

These measures also include any annexes and amendments thereto, and the initiation and conduct of the underlying investigations that led to their publication.

II.- Legal basis

Measure 1 (Imposition of definitive countervailing duties - Original investigation) appears to be inconsistent with Peru's obligations under the WTO Agreements, including those under the provisions of the SCM Agreement and the GATT 1994. Specifically, Peru appears to have violated the following:

1. **The introductory paragraph of Article 14 of the SCM Agreement** because the method used by Peru to calculate the benefit to the recipient was not provided for in Peru's legislation or implementing regulations.
2. **Article 14(d) of the SCM Agreement** and, therefore, **Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994**, because Peru improperly calculated the amount of subsidization in terms of the benefit to the recipient due to, *inter alia*, its failure to determine the adequacy of remuneration in relation to prevailing conditions in the Argentine biodiesel market. As a result, Peru's miscalculation of the alleged benefit to Argentine exporters led it to impose countervailing duties that are higher than necessary to counteract the alleged subsidization.
3. **Articles 15.1 and 15.2 of the SCM Agreement** because, with regard to the effect of the allegedly subsidized imports on prices, the analysis carried out by Peru was not based on positive evidence and did not involve an objective examination and, therefore, it improperly found significant price undercutting and price suppression within the meaning of Article 15.2.
4. **Articles 15.1 and 15.5 of the SCM Agreement** because, with regard to the demonstration of a causal relationship, Peru failed to carry out an objective examination based on positive evidence of factors other than the allegedly subsidized imports which

were injuring the domestic industry and, consequently, it improperly attributed the injury caused by those other factors to imports of biodiesel from Argentina.

5. **Articles 10, 19.1 and 32.1 of the SCM Agreement and Article VI:6(a) of the GATT 1994** because Peru imposed countervailing duties not in conformity with the provisions of those Agreements.
6. **Article XVI:4 of the Marrakesh Agreement** Establishing the World Trade Organization **and Article 32.5 of the SCM Agreement** because Peru failed to take all necessary steps to ensure that the administrative procedures that led to the imposition of the countervailing duties on biodiesel originating in Argentina were in conformity with the provisions of those Agreements.

Measure 2 (Imposition of definitive anti-dumping duties - Original investigation) appears to be inconsistent with Peru's obligations under the WTO Agreements, including those under the provisions of the Anti-Dumping Agreement and the GATT 1994. Specifically, Peru appears to have violated the following:

1. **Article 5.3 of the Anti-Dumping Agreement** because Peru failed to examine the accuracy and adequacy of the evidence provided in the application to determine whether it was sufficient to justify the initiation of an anti-dumping investigation.
2. **The first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement** because, by including costs not associated with the production and sale of the product under consideration, Peru failed to calculate costs on the basis of the records of the exporters under investigation. Furthermore, with regard to the **second sentence of Article 2.2.1.1 of the Anti-Dumping Agreement**, Peru failed to consider all available evidence on the proper allocation of costs when calculating an amount for administrative, selling and general costs. As a result, Peru violated **Article 2.2 of the Anti-Dumping Agreement**, because it failed to determine the margin of dumping by a proper comparison with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.
3. **Article 2.2.2(iii) of the Anti-Dumping Agreement and, therefore, Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994** because Peru failed to use a reasonable method to calculate the amount for profit.
4. **Article 2.2.2(iii) of the Anti-Dumping Agreement and, therefore, Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994** because Peru failed to ensure that the margin determined for profit did not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.
5. **Article VI:2 of the GATT 1994 and Article 9.3 of the Anti-Dumping Agreement** because Peru imposed anti-dumping duties in excess of the margin of dumping that it should have established under Article 2 of the Anti-Dumping Agreement.
6. **Article 3.1 and 3.2 of the Anti-Dumping Agreement** because, with regard to the effect of the allegedly dumped imports on prices, the analysis carried out by Peru was not based on positive evidence and did not involve an objective examination and, therefore, it improperly found significant price undercutting, price suppression and price depression within the meaning of Article 3.2.
7. **Article 3.1 and 3.4 of the Anti-Dumping Agreement** because, with regard to the impact of the allegedly dumped imports on the domestic industry, Peru's analysis did not involve an objective examination as it failed to include an adequate evaluation of all factors having a bearing on the state of the domestic industry.
8. **Article 3.1 and 3.5 of the Anti-Dumping Agreement** because, with regard to the demonstration of a causal relationship, Peru failed to carry out an objective examination based on positive evidence of factors other than the allegedly dumped imports which

were injuring the domestic industry and, consequently, it improperly attributed the injury caused by those other factors to imports of biodiesel from Argentina.

9. **Article 18.1 of the Anti-Dumping Agreement** because Peru imposed anti-dumping duties in violation of the provisions of that Agreement.
10. **Article VI:5 of the GATT 1994** because Peru imposed both anti-dumping and countervailing duties on the same product to compensate for the same situation of alleged dumping and subsidization.
11. **Article XVI:4 of the Marrakesh Agreement** Establishing the World Trade Organization and **Article 18.4 of the Anti-Dumping Agreement** because Peru failed to take all necessary steps to ensure that the administrative procedures that led to the imposition of the anti-dumping duties on biodiesel originating in Argentina were in conformity with the provisions of those Agreements.

Measure 3 (Continued imposition of countervailing duties - Changed circumstances review) appears to be inconsistent with Peru's obligations under the WTO Agreements, including those under the provisions of the SCM Agreement and the GATT 1994. Specifically, Peru appears to have violated the following:

1. **Article 21.2 of the SCM Agreement** and, therefore, **Article 21.1 of that Agreement** because Peru improperly reviewed the need for the continued imposition of the duty to offset the alleged subsidy, as it failed to make a determination based on a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of recurrence or continuation of subsidization and injury. Consequently, Peru failed to ensure that the countervailing duties remained in force only as long as and to the extent necessary to counteract the alleged subsidization.
2. **Second sentence of Article 21.4 of the SCM Agreement** because Peru failed to carry out the changed circumstances review expeditiously and to conclude it within the normal 12-month period provided for in that Article, without any abnormal circumstances that would justify such non-compliance.
3. **Article 32.1 of the SCM Agreement** because Peru continued to impose countervailing duties in violation of the provisions of that Agreement.
4. **Article XVI:4 of the Marrakesh Agreement** Establishing the World Trade Organization and **Article 32.5 of the SCM Agreement** because Peru failed to take all necessary steps to ensure that the administrative procedures that led to the continued imposition of the countervailing duties on biodiesel originating in Argentina were in conformity with the provisions of those Agreements.

Measure 4 (Continued imposition of anti-dumping duties - Changed circumstances review) appears to be inconsistent with Peru's obligations under the WTO Agreements, including those under the provisions of the Anti-Dumping Agreement and the GATT 1994. Specifically, Peru appears to have violated the following:

1. **Article 11.2 of the Anti-Dumping Agreement** and, therefore, **Article 11.1 of that Agreement** because Peru improperly reviewed the need for the continued imposition of the duty to offset the alleged dumping, as it failed to make a determination based on a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of recurrence or continuation of dumping and injury. Consequently, Peru failed to ensure that the anti-dumping duties remained in force only as long as and to the extent necessary to counteract the alleged dumping.
2. **Article 6.8 and Annex II of the Anti-Dumping Agreement**, through **Article 11.4 of the that Agreement (first sentence)**, because Peru made determinations improperly on the basis of the facts available ("best information available"), when the requirements of Article 6.8 and Annex II of the Anti-Dumping Agreement had not been met. Specifically, and among other issues, (a) Peru failed to take into account verifiable information that was appropriately submitted in a timely fashion by the Argentine

companies (paragraph 3 of Annex II); (b) Peru did not immediately inform the Argentine companies of the reasons for rejecting the evidence and information supplied by the authorities or provide them with an opportunity to provide further explanations within a reasonable period (paragraph 6 of Annex II); and (c) Peru did not use special circumspection when basing its conclusions on information from a secondary source as, *inter alia*, it failed to check the accuracy of the secondary source information used by comparing it to the information obtained from the Argentine exporters (paragraph 7 of Annex II).

3. **Second sentence of Article 11.4 of the Anti-Dumping Agreement** because Peru failed to carry out the changed circumstances review expeditiously and to conclude it within the normal 12-month period provided for in that Article, without any abnormal circumstances that would justify such non-compliance.
4. **Article 18.1 of the Anti-Dumping Agreement** because Peru continued to impose anti-dumping duties in violation of the provisions of that Agreement.
5. **Article XVI:4 of the Marrakesh Agreement** Establishing the World Trade Organization and **Article 18.4 of the Anti-Dumping Agreement** because Peru failed to take all necessary steps to ensure that the administrative procedures that led to the continued imposition of the anti-dumping duties on biodiesel originating in Argentina were in conformity with the provisions of those Agreements.

Measure 5 (Continued imposition of countervailing duties - Sunset review) appears to be inconsistent with Peru's obligations under the WTO Agreements, including those under the provisions of the SCM Agreement and the GATT 1994. Specifically, Peru appears to have violated the following:

1. **Article 21.3 of the SCM Agreement** and, therefore, **Article 21.1 of that Agreement** because Peru did not terminate the definitive countervailing duties imposed on Argentine biodiesel exports, despite the passing of five years since the date of their imposition, as it failed to make a determination based on a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of recurrence or continuation of subsidization and injury. Consequently, Peru failed to ensure that the countervailing duties remained in force only as long as and to the extent necessary to counteract the alleged subsidization.
2. **Second sentence of Article 21.4 of the SCM Agreement** because Peru failed to carry out the sunset review expeditiously and to conclude it within the normal 12-month period provided for in that Article, without any abnormal circumstances that would justify such non-compliance.
3. **Article 32.1 of the SCM Agreement** because Peru continued to impose countervailing duties in violation of the provisions of that Agreement.
4. **Article XVI:4 of the Marrakesh Agreement** Establishing the World Trade Organization and **Article 32.5 of the SCM Agreement** because Peru failed to take all necessary steps to ensure that the administrative procedures that led to the continued imposition of the countervailing duties on biodiesel originating in Argentina were in conformity with the provisions of those Agreements.

Measure 6 (Continued imposition of anti-dumping duties - Sunset review) appears to be inconsistent with Peru's obligations under the WTO Agreements, including those under the provisions of the Anti-Dumping Agreement and the GATT 1994. Specifically, Peru appears to have violated the following:

1. **Article 11.3 of the Anti-Dumping Agreement** and, therefore, **Article 11.1 of that Agreement** because Peru did not terminate the definitive anti-dumping duties imposed on Argentine biodiesel exports, despite the passing of five years since the date of their imposition, as it failed to make a determination based on a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of recurrence or continuation of dumping and injury. Consequently, Peru failed to ensure

that the anti-dumping duties remained in force only as long as and to the extent necessary to counteract the alleged dumping.

2. **Second sentence of Article 11.4 of the Anti-Dumping Agreement** because Peru failed to carry out the sunset review expeditiously and to conclude it within the normal 12-month period provided for in that Article, without any abnormal circumstances that would justify such non-compliance.
3. **Article 18.1 of the Anti-Dumping Agreement** because Peru continued to impose anti-dumping duties in violation of the provisions of that Agreement.
4. **Article XVI:4 of the Marrakesh Agreement** Establishing the World Trade Organization and **Article 18.4 of the Anti-Dumping Agreement** because Peru failed to take all necessary steps to ensure that the administrative procedures that led to the continued imposition of the anti-dumping duties on biodiesel originating in Argentina were in conformity with the provisions of those Agreements.

Peru's measures appear to nullify or impair the benefits accruing to Argentina, directly or indirectly, under the cited Agreements.

Argentina reserves the right to address additional measures and claims under other provisions of the WTO Agreement regarding the above matters during the course of the consultations.

I look forward to receiving your reply to this request and to setting a mutually convenient date for these consultations.
