

**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 to the Follow-Up Questions Posed by the
EUROPEAN COMMUNITIES¹ Regarding
the Notification of PERU²

The following communication, dated 13 October 2003, has been received from the Permanent Mission of Peru.

The Permanent Mission of Peru to the International Organizations based in Geneva presents its compliments to the Secretariat of the World Trade Organization (Rules Division) and, pursuant to Article 16.4 of the Anti-Dumping Agreement and Article 25.9 of the Agreement on Subsidies and Countervailing Measures, hereby submits the replies of the Dumping and Subsidies Commission of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) to the follow-up questions posed by the Permanent Delegation of the European Communities (document G/ADP/Q1/PER/19/Suppl.1).

¹ G/ADP/Q1/PER/19/Suppl.1-G/SCM/Q1/PER/19/Suppl.1

² G/ADP/N/1/PER/2-G/SCM/N/1/PER/2

Question 1

Title IV: does Peru have any provisions on cumulation of imports in accordance with Article 3.3 of the Anti-Dumping Agreement ("ADA")?

Reply

No.

Question 2

Article 20(ii) provides that in exceptional circumstances the territory may be divided into two or more competitive markets in accordance with Article 4.1(ii) ADA, but does not contain a provision corresponding to Article 4.2 ADA. Please clarify whether Article 4.2 ADA will be applied directly.

Reply

Article 4.2 of the Anti-Dumping Agreement applies directly in cases involving the circumstances governed by Article 20(ii) of the Regulations.

Question 3

Article 28, paragraph 2, provides that the interested parties may submit comments on the document of Essential Facts within a maximum of ten days calculated from the day following their notification. Can this time-limit be extended, e.g. in cases where the notification and the receipt of this document do not timely coincide?

Reply

The time-limit for submitting comments on the document of Essential Facts is ten days from the day following its notification to the addressee at his or her domicile, as confirmed by the signature or stamp of the recipient. This time-limit cannot be extended.

Question 4

Pursuant to Article 29, paragraph 3, the Commission shall impose a fine on parties who obstruct the taking of evidence (...), or in any way hinder or obstruct the normal conduct of the investigation procedure. Please clarify how Peru intends to apply this provision. How is it consistent with the right of interested parties not to cooperate in an investigation?

Reply

Article 29, paragraph 3, of the Regulations allows the Commission to impose a fine on parties for legal misconduct during the investigation proceedings, that is to say, it applies only to those who have asked to appear in person in the investigation proceedings, and who make tactical use of their status as parties to the proceedings to prevent the Commission from conducting its investigation work, for example by falsifying information. This clause does not apply to parties who do not wish to appear in person in the proceedings and/or to cooperate by means of the submission of information, since, in such cases, the Anti-Dumping Agreement empowers the investigating authority to take a decision on the basis of the best information available.

Question 5

Title VI, Chapter II: please clarify whether Peru carries out verification visits in accordance with Article 6.7 ADA and has any rules on such verifications?

Reply

When considered necessary, inspection visits may be carried out in the territory of another Member. There are no specific rules relating to this in our Regulations.

Question 6

Article 46, paragraph 2, states that provisional or definitive anti-dumping duties constitute fines and not any form of taxation. Please clarify the meaning and legal consequences of this provision.

Reply

In Peru, anti-dumping and countervailing duties, whether provisional or definitive, constitute fines solely for the purpose of the collection and fiscal use of the revenue therefrom.

Question 7

Please clarify whether Article 52 constitutes the implementation of Article 9.3.2 ADA?

Reply

Article 52 of the Regulations does not govern the same matters as Article 9.3.2 of the Anti-Dumping Agreement, but sets the limitation period for the reimbursement of undue or excess payments generated, for example, in cases where provisional duties have been imposed and where, upon completion of the investigation, either the definitive duties are less than the provisional duties or no measures at all are imposed. Another such instance would be where inappropriate anti-dumping or countervailing duties are charged and/or paid by mistake. It should be noted that requests for reimbursement are settled by the investigating authority within thirty (30) calendar days of the filing date of the request.

Question 8

The Supreme Decree does not contain provisions on public notices. Does Peru intend to apply Article 12 of the Anti-Dumping Agreement directly in this respect?
