

**Committee on Subsidies  
and Countervailing Measures**

Original: English

**COUNTERVAILING DUTY INVESTIGATION BY PERU ON OLIVE OIL  
FROM THE EUROPEAN COMMUNITY**

Request for consultations by the European Community  
under Article 13.2 of the Agreement

The following communication, dated 11 February 2003, has been received from the Permanent Delegation of the European Commission.

The European Community (EC) requests consultations with the Republic of Peru on the countervailing duty investigation concerning imports of olive oil from the European Community. These consultations are requested in accordance with Article 13.2 of the WTO Agreement on Subsidies and Countervailing Measures ("the SCM Agreement").

These consultations concern the initiation, on 29 August 2002, of the above mentioned CVD investigation by the INDECOPI - Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual and the imposition, on 21 November 2002, of provisional countervailing duties.

The purpose of the consultations is to enable the EC to clarify a number of issues arising from the decisions taken by INDECOPI.

The issues which the EC will raise during the consultations are as follows:

- (a) Initiation of the investigation on alleged subsidised imports of olive oil from the EC

The EC is convinced that this investigation should not have been initiated because it does not meet the requirements provided by Article 11 of the SCM Agreement.

1. According to Article 11.2(iii) of the SCM Agreement, petitioners have to provide "evidence with regard to the existence, amount and nature of the subsidy in question". In addition, petitioners are required to explain why these programmes have provided a countervailable benefit to the producers concerned. In that respect, the petition should include all the information, which is reasonably available to the applicant. In the present case the petitioners have failed to provide sufficient evidence to demonstrate that the alleged subsidy confers a benefit to the product concerned. In particular, the petitioners failed to provide evidence on the benefit conferred to olive oil through the aid attributed to olive growers.

2. In this regard, it is also considered that the INDECOPI did not sufficiently "review the accuracy or adequacy of the evidence provided in the application" to determine whether there was sufficient evidence to justify the initiation of an investigation, as required by Article 11.3.

- (b) Imposition of provisional countervailing duties on alleged subsidised imports of olive oil from the EC

The EC has serious concerns about the Peruvian decision to impose provisional countervailing measures. The EC is convinced that this decision raises serious doubts on the WTO compatibility of this investigation, as foreseen in Article 10 of the WTO SCM Agreement.

1. Article 17.1(a) of the WTO SCM Agreement provides that provisional measures may be applied only if interested Members and interested parties have been given adequate opportunity to submit information and make comments. In the present investigation interested parties were not given such an opportunity. Notably, the Peruvian authorities imposed provisional measures before receiving the EC's reply to their questionnaire, in spite of the fact that the questionnaire was submitted by the EC before the expiry of the deadline for replying.

Moreover, Article 13.2 and footnote 44 of the SCM Agreement provide that "throughout the period of investigation, Members the products of which are the subject of the investigation shall be afforded reasonable opportunity to continue consultations" and no affirmative determination should be made without reasonable opportunity for consultation being given. In fact, INDECOPI, by not even waiting for the EC questionnaire reply, made an affirmative preliminary determination "without reasonable opportunity for consultations having been given", since such a reply must be the basis for such consultations. In these circumstances, the EC and the Member States did not have the opportunity to clarify the factual situation with a view to arriving at a mutually agreed solution, as foreseen in the above-mentioned Article. Therefore, INDECOPI appears to have based its findings and the decision to impose provisional measures solely on the information presented by the Peruvian domestic industry.

2. Under the provisions of Articles 1.1 (b) of the SCM Agreement a "subsidy shall be deemed to exist if a benefit is thereby conferred". In Addition, Article 14 provides that the amount of a subsidy should be calculated in terms of the benefit to the recipient and the method used in the particular case shall be transparent and adequately explained. In this regard, the Peruvian investigation authority seems to have based its findings only on provisions of Regulation No 136/66/ EEC, of 22 September 1966, on the establishment of a common organisation of the market in oils and fats. However, the alleged subsidy is an assistance that growers of olives in EC Member States can apply for. The level of this assistance varies according to Member State and to harvest. In these circumstances, the investigating authorities have to analyse the existence of an alleged downstream benefit to olive oil producers, and the effect on import prices, so as to demonstrate that olive oil imports are, through the effect of a financial contribution to the production of olives, causing injury to the domestic industry.

The EC looks forward to agreeing a suitable date for these consultations. It is provisionally suggested that the consultations take place in Geneva as soon as possible.

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