

**Committee on Anti-Dumping Practices**  
**Committee on Subsidies and Countervailing Measures**

Original: Spanish

REPLIES TO QUESTIONS POSED BY AUSTRALIA<sup>1</sup> CONCERNING THE  
NOTIFICATION OF PERUVIAN LAWS AND REGULATIONS<sup>2</sup>

The following communication, dated 5 January 1996, has been received from the Permanent Mission of Peru.

Question 1

**Since Peru has not yet adopted its draft regulation for the WTO Anti-Dumping and Subsidies Agreements, does this mean that Peru will not be taking any anti-dumping or countervailing duty actions before the regulation has been adopted? If not, how will Peru ensure consistency with the WTO Agreements?**

Reply

While it is true that Peru has not yet enacted regulations under the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Measures) and the Agreement on Subsidies and Countervailing Measures, it must be pointed out that in accordance with Article 55 of the 1993 Political Constitution of Peru the two Agreements have the same status as laws enacted by the Congress of the Republic and therefore their application is mandatory throughout the Peruvian territory.

From the moment the two Agreements are part of domestic legislation, they apply for all procedures relating to the establishment of anti-dumping or countervailing duties on dumped or subsidized imports causing or threatening to cause injury to domestic industry.

A draft Supreme Decree is currently being prepared in order to ensure thorough compliance, in the realm of administrative proceedings, with the Anti-Dumping and Subsidies Agreements approved by the Congress of the Republic. Meanwhile, the national legislation enacted previously, in other words Supreme Decree No. 133-91-EF and other amendments thereto, is applied on a suppletive basis wherever it does not conflict the provisions of the two Agreements.

Finally, it should be pointed out that the Peruvian legal framework for dumping and subsidies consists of the provisions that were notified in due course to the Secretariat of the General Agreement on Tariffs and Trade (GATT) through the Permanent Mission of Peru in Geneva, the Agreement

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<sup>1</sup>G/ADP/W/83-G/SCM/W/92.

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

Establishing the World Trade Organization (WTO) and the Multilateral Trade Agreements contained in the Final Act of the Uruguay Round signed in Marrakesh, Morocco, on 15 April 1994. These Agreements were adopted by the Congress of the Republic of Peru by Legislative Resolution No. 26407, published in the Official Journal, "El Peruano", of 19 January, and have been in force since 1 January 1995.

## **Question 2**

**Could Peru provide clarification on the following points regarding the incorporation of the WTO Anti-Dumping and Subsidies Agreements into the Peruvian legal system.**

- (a) **What is the hierarchy between these WTO Agreements and other Peruvian legislation, regulations and other administrative rules?**

### **Reply**

The Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Measures) and the Agreement on Subsidies and Countervailing Measures, having been approved by the Congress of the Republic by means of a Legislative Resolution, have the status of law and no other provision issued by the Executive power has sufficient legal status to amend the scope of the commitments laid down in the two Agreements.

## **Question 2(b)**

- (b) **Will subsequent laws (including regulations and other administrative rules) take precedence over the WTO Agreements? For example, would the foreshadowed regulation take precedence over the WTO Agreements if a court found that there was a conflict?**

### **Reply**

The provisions in force prior to the approval of the World Trade Organization Agreements have been repealed wherever they conflict with those Agreements.

Hence, there is no possibility of a conflict arising between national dumping and subsidy provisions, on the one hand, and the provisions of the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Measures) and the Agreement on Subsidies and Countervailing Measures, on the other. In any event, the Peruvian judges and courts will have to decide any issue in accordance with the provisions of those Agreements.

It should be stressed that our country is governed by the Roman Law system, and therefore there are no "binding precedents" as in the case of countries which have a legal system based on Common Law.

## **Question 2(c)**

- (c) **In the absence of a specific provision in regulations, which levels of officials would have the authority to interpret the WTO Agreements to determine procedure in an anti-dumping or countervailing duty action?**

Reply

In accordance with Decree Law No. 25968 and the regulations thereto, the Dumping and Subsidies Surveillance Commission, which is organizationally part of the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI), is the sole administrative authority of first instance with powers to initiate and resolve proceedings to make determinations concerning dumped or subsidized imports. For this purpose, it officially applies the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Measures) and the Agreement on Subsidies and Countervailing Measures in order to decide whether or not to establish an anti-dumping or countervailing duty to avoid and correct distortions to competition in the market arising from dumping or subsidization.

Responsibility for interpreting and applying these provisions in second and last administrative instance lies with the Tribunal for the Defence of Competition and Intellectual Property, which is also organizationally part of INDECOPI.

**Question 2(d)**

- (d) In the event of a conflict between the WTO Agreements and other laws, could investigating officials decide which laws have precedence?**

Reply

In Peruvian law, in the event of a conflict between national legislation on the one hand and the provisions of the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Measures) and Agreement on Subsidies and Countervailing Measures, on the other, the national authorities would have to apply the special provision with precedence over any general provision.

Nevertheless, it must be pointed out there is no possibility of conflict between the laws, because as stated earlier the legislation approving the Agreements has higher legal status.

**Question 2(e)**

- (e) Could an interested party appeal to the courts about the interpretation of the WTO Agreements by officials?**

Reply

The decisions of the INDECOPI Dumping and Subsidies Surveillance Commission may be appealed by a party that considers itself injured to the INDECOPI Tribunal for the Defence of Competition and Intellectual Property. Administrative remedies are exhausted with the decision of the Tribunal.

The decisions of the INDECOPI Tribunal for the Defence of Competition and Intellectual Property may be challenged judicially before the Civil Division of the Lima Superior Court of Justice, as provided for in the Organic Law on the Judiciary.

The judgements of the above-mentioned Court may be appealed to the Constitutional and Social Law Division of the Supreme Court of the Republic.

**Question 2(f)**

**(f) How would Peru handle a conflict in views over the interpretation of the WTO Agreements between a Peruvian court and the WTO Dispute Settlement Body?**

**Reply**

In Peruvian law, the degree to which the recommendations and decisions of the World Trade Organization's dispute settlement bodies are binding vis-à-vis decisions of the administrative and judicial authorities is a matter governed by the provisions of the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Measures) and Agreement on Subsidies and Countervailing Measures, as the case may be. Hence, as a Member country Peru is obliged to comply with the recommendations and decisions of dispute settlement bodies pursuant to the principle of international law "pacta sunt servanda".