

**WORLD TRADE
ORGANIZATION**

G/ADP/N/1/PER/1/Suppl.3
G/SCM/N/1/PER/1/Suppl.3
30 January 2001
(01-0491)

**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**

PERU

Supplement

The following communication, dated 23 January 2001, has been received from the Permanent Mission of Peru.

The Permanent Mission of Peru to the World Trade Organization (WTO) presents its compliments to the Secretariat of the WTO and, with reference to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and Article 32.6 of the Agreement on Subsidies and Countervailing Measures, has the honour to submit herewith Supreme Decree No. 144-2000-EF amending the Regulations on Dumping and Subsidies.

SUPREME DECREE No. 144-2000-EF

THE PRESIDENT OF THE REPUBLIC

CONSIDERING:

That by virtue of Supreme Decree No. 133-91-EF, amended by Supreme Decree No. 051-92-EF, rules were adopted to prevent and correct distortions of competition in the market caused by dumping and subsidies;

That by virtue of Legislative Decision No. 26407, the Agreement Establishing the World Trade Organization (WTO) and the Multilateral Agreements on Trade in Goods, contained in the Final Act of the Uruguay Round signed at Marrakesh, Morocco, on 15 April 1994, were approved;

That the aforementioned Multilateral Agreements on Trade in Goods include the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture;

That pursuant to Article 18.4 of the Agreement on Implementation of Article VI of the GATT 1994 and Article 32.5 of the Agreement on Subsidies and Countervailing Measures, it is the responsibility of WTO Members to take all necessary steps, of a general or particular character, to ensure the conformity of their laws, regulations and administrative procedures with the provisions of the two aforementioned Agreements;

That Supreme Decree No. 043-97-EF established Regulations for the above-mentioned Agreements, the first supplementary provision of which specified that the provisions of Supreme Decree No. 133-91-EF, as amended by Supreme Decree No. 051-92-EF and, on a supplementary basis, the provisions of Supreme Decree No. 043-97-EF would apply to imports from countries not Members of the WTO;

That in order to make investigation procedures more predictable and transparent, it is necessary to improve the administrative procedures for the imposition or review of anti-dumping or countervailing duties;

DECREES:

Article 1. Add the following subparagraph VIII to Article 2 of Supreme Decree No. 043-97-EF:

"Article 2. (...)

VIII. Days: calendar days, unless otherwise indicated. If the last day of any authorized time-limit is not a working day, that time-limit shall be understood to be automatically extended to the first working day thereafter."

Article 2. Add Article 11 *bis* to Supreme Decree No. 043-97-EF:

"Article 11 *bis*. For the purpose of determining the amount of the subsidy in terms of the benefit to the recipient, the following criteria shall be employed, as applicable:

A loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan

and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amounts.

A loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan without the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees.

The provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

If the subsidy is granted by reason of the recipient firm's overall export activity, the value of the subsidy for the product under investigation shall be calculated with due regard for the relationship between export sales of that product and the total export sales of the firm.

Generally speaking, a separate subsidy amount shall be determined for each of the known exporters or producers of the product subject to investigation, in the country investigated. For the remaining exports originating in the country investigated, the amount established shall be no lower than that determined for firms accredited as interested parties, taking into account the best information available.

The value of loan subsidies shall be determined on the basis of the financial method most appropriate in the Commission's view, for the purpose of establishing the real impact of the subsidy on the goods."

Article 3. The first paragraph of Article 14.II of Supreme Decree No. 043-97-EF shall be amended to read:

"Article 14. [...]

II. With regard to the impact of the dumped or subsidized exports on the domestic industry concerned, there shall be an examination of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of installed capacity; factors affecting domestic prices; the magnitude of the margin of dumping, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

The Commission may take into account, if they are deemed relevant, the origin and characteristics of the inputs incorporated in the like product by the domestic producers in the production process."

Article 4. The following paragraph shall be incorporated in Article 15 of Supreme Decree No. 043-97-EF:

"Article 15. (...)

These factors may include, *inter alia*, the volumes and price trends of imports from third countries, the investments made, finance plans and technology."

Article 5. Article 17 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 17. The determination of a domestic producer shall be governed by the relevant provisions on the subject.

Without prejudice to the provisions of the previous paragraph, in determining a domestic producer the Commission shall take into account the following criteria, *inter alia*:

- Whether the producers are related to the exporters of the allegedly dumped or subsidized product;
- whether the producers are themselves acting as importers of the dumped or subsidized product".

Article 6. The last two paragraphs of Article 22 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 22. (...)

The time-limits applicable to foreign producers or exporters shall be counted from the date of receipt of the questionnaire, which shall be deemed to have been received seven (7) days after dispatch to the addressee in the country of origin or export.

The Commission may grant additional extensions, provided that the request contains adequate justification therefor, subject to a maximum limit of sixty (60) days for the submission of replies to questionnaires".

Article 7. Add Article 22 *bis* to Supreme Decree No. 043-97-EF:

"Article 22 *bis*. Within six (6) months from publication of the decision to initiate an investigation, the period for the submission of evidence by the parties shall be concluded, without prejudice to the Secretariat's right to request information at any stage of the proceedings. However, at the discretion of the Commission, the evidentiary period may be extended by a maximum of three (3) additional months, in accordance with Article 25.

Within thirty (30) days after the conclusion of the evidentiary period, the Commission shall notify to the interested parties the essential facts which form the basis for its final decision. The parties may submit their comments on the essential facts within a maximum of ten (10) days following receipt of such notification.

Following expiry of the period for receipt of comments on the essential facts, the Commission shall adopt a final decision within a period of thirty (30) days.

At the request of any of the parties, a final hearing shall be convened at which they may put forward arguments relating only to the essential facts notified. The final hearing must be requested in the written submission containing the comments on the essential facts. The parties shall have seven (7) days to present in writing the arguments put forward at the

hearing, in accordance with the provisions of Article 31. Once this period has expired, the Commission shall adopt a final decision within thirty (30) days".

Article 8. The following paragraph shall be added to Article 23 of Supreme Decree No. 043-97-EF:

"Article 23. (...)

The Commission shall impose a fine on parties to the administrative proceedings who obstruct the taking of evidence, use the proceedings for unlawful or fraudulent purposes or in any way hinder or obstruct the normal conduct of the investigation procedure, in accordance with the applicable rules on the subject, including the supplementary rules of administrative law contained in Articles 110 et seq. of the Code of Civil Procedure."

Article 9. The second paragraph of Article 25 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 25. (...)

If there are legitimate grounds for doing so, the Commission may extend the investigation period, at the conclusion of the initial period for the submission of evidence, by a maximum of three (3) additional months."

Article 10. Article 27 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 27. Unless the information is confidential, all evidence shall be made available to the other interested parties participating in the procedure. The Commission may also send copies of the proceedings to anyone who so requests and shows proof of a legitimate interest."

Article 11. The following paragraph shall be incorporated in Article 28 of Supreme Decree No. 043-97-EF:

"Article 28. (...)

To that end, without being limitative, any information set out in the illustrative list in Annex I to this Supreme Decree may be considered as confidential information."

Article 12. The second paragraph of Article 29 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 29. (...)

Where information is characterized as confidential by virtue of its nature or at the request of one of the parties, and the interested party has not shown good cause or submitted the corresponding non-confidential summary, the Secretariat shall request it to justify the confidential nature of the information, provide the corresponding non-confidential summary or withdraw all or part of the request for confidentiality within seven (7) days."

Article 13. Article 30 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 30. If the parties which submitted information as confidential fail to show good cause for such special treatment, to furnish the corresponding non-confidential summary or to withdraw the request for confidentiality within the period laid down by the Commission, this information may be disregarded, unless convincing evidence from an appropriate source demonstrates that the information is correct. The Commission may order the return of the information if it can be obtained in non-confidential form from other sources."

Article 14. The text of Article 31 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 31. Within fifteen (15) days of receiving the replies to the questionnaires addressed to exporters and importers, the Commission shall convene a hearing in order to clarify the disputed points that emerge from the parties' claims."

At the request of any of the parties and within the evidentiary period, the Commission shall hold hearings to allow the parties to put forward arguments in support of their position. No party shall be obliged to attend a hearing and its absence shall not be detrimental to its cause.

The Commission shall only take information provided at a hearing into account if it is submitted in writing to the Commission within seven (7) days after the hearing."

Article 15. The following paragraph shall be incorporated in Article 33 of Supreme Decree No. 043-97-EF:

"Article 33. (...)

However, documents in another language need only be accompanied by a translation under the joint responsibility of the interested party and a translator resident in Peru, in accordance with Article 56 of the Single Harmonized Text of the Law on General Regulations for Administrative Procedures, or any enactment by which it is superseded, and without prejudice to the criminal and civil liability that may be applicable."

Article 16. The following paragraph shall be incorporated in Article 45 of Supreme Decree No. 043-97-EF:

"Article 45. (...)

The National Customs Administration shall transmit to the Commission, within one month following the close of each quarter, monthly reports on the application of the anti-dumping or countervailing duties in force. These reports shall contain the following information:

1. The volume and value of imports of each of the products subject to definitive and provisional anti-dumping or countervailing duties in force, broken down by origin.
2. The amount collected in respect of each of the definitive and provisional anti-dumping or countervailing duties in force, broken down by origin.
3. A list of the securities lodged for provisional duties in force.

4. The volume and value of imports corresponding to the subheadings comprising spare parts and components of finished products, subject to definitive anti-dumping or countervailing duties."

Article 17. Article 47 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 47. After a period of at least twelve (12) months has elapsed from publication of the decision which put an end to the investigation, the Commission may, at the request of any interested party or ex officio, consider whether the definitive anti-dumping or countervailing duties in force should be maintained or modified. In evaluating the request, the Commission shall consider whether there is sufficient evidence of a significant change in the situation which warrants a review of the duties imposed."

Article 18. Article 47 *bis* shall be added to Supreme Decree No. 043-97-EF, as follows:

"Article 47 *bis* Within six (6) months of the final importation of products subject to the application of definitive duties, importers may apply for reimbursement of any overpayment in respect of the established percentage rate of duty, if they consider that a smaller dumping margin exists or if the amount of the subsidy has been reduced, pursuant to the decision to impose definitive duties. To that end, they shall submit the relevant evidence on which their application is based. The reimbursement procedure shall be governed by the provisions of Articles 18 to 53, insofar as they are applicable."

Article 19. The text of the second paragraph of Article 49 of Supreme Decree No. 043-97-EF shall be amended as follows:

"Article 49. (...)

The aforementioned appeals must be lodged within fifteen (15) working days from the day following notification of the Commission's decision."

Article 20. Annex I shall be incorporated in Supreme Decree No. 043-97-EF, with the following wording:

ANNEX I

ILLUSTRATIVE LIST CONCERNING INFORMATION WHICH MAY BE OF A CONFIDENTIAL NATURE

- Production costs
- Distribution costs
- Data on pricing at the different stages of production
- Specifications of components, where appropriate
- Data on utilization of capacity, where appropriate
- Inventories, valued in monetary terms
- List of suppliers, where appropriate
- Non-public balance sheets and financial statements
- Data on pricing at the various stages of marketing
- Commercial secrets relating to the nature of a product or production process
- List of customers
- Commercial invoices
- Conditions of sale (excluding conditions of sale to the public)
- Customer prices
- Future marketing strategies
- Prices applied to different customers
- Research and development data
- Business secrets relating to the nature of a product or the production process
- Industrial secrets and know-how
- Technological capacity
- Technological projects
- Investment projects
- Information which could prejudice the provision of similar information or information from the same source
- Any other specific commercial information which, if disclosed to the public, could cause substantial harm to the competitive position of the party submitting the information
- Information from third parties not involved in the investigation procedure, the unauthorized disclosure of which could cause them injury

This list is of an illustrative nature and does not exempt parties from the obligation to show cause and submit the relevant non-confidential summary, which must be evaluated by the Commission when it determines the confidential character of the information.

TRANSITIONAL PROVISION

Single paragraph. The provisions contained in the this Supreme Decree are applicable at all stages of ongoing proceedings.

FINAL PROVISION

Single paragraph. This Supreme Decree shall be endorsed by the Minister for the Economy and Finance and the Minister for Industry, Tourism, Integration and International Trade Negotiations, and shall enter into force on the day following its publication in the Official Journal, *El Peruano*.

Done at Government House, Lima, on the twenty-second day of the month of December in the year two thousand.

VALENTIN PANIAGUA CORAZAO
Constitutional President of the Republic

JAVIER SILVA RUETE
Minister for the Economy and Finance

EMILÍO NAVARRO CASTAÑEDA
Minister for Industry, Tourism, Integration and International Trade Negotiations
