

## PERU - ADDITIONAL DUTY ON IMPORTS OF CERTAIN AGRICULTURAL PRODUCTS

### **Report of the Panel** WT/DS457/R

*Adopted by the Dispute Settlement Body  
on 31 July 2015  
as Modified by the Appellate Body Report*

#### TABLE OF CONTENTS

	Page
1. INTRODUCTION .....	3585
1.1 Complaint by Guatemala .....	3585
1.2 Panel Establishment and Composition .....	3586
1.3 Panel Proceedings.....	3586
2. FACTUAL ASPECTS.....	3588
2.1 Introduction .....	3588
2.2 Measures at Issue.....	3588
3. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS.....	3590
4. ARGUMENTS OF THE PARTIES .....	3591
5. ARGUMENTS OF THE THIRD PARTIES .....	3591
6. INTERIM REVIEW .....	3592
7. FINDINGS .....	3598
7.1 Preliminary Considerations .....	3598
7.1.1 Introduction .....	3598
7.1.2 The Panel's terms of reference .....	3598
7.1.3 Function of the Panel and standard of review .....	3598
7.1.4 Interpretation of the relevant rules of the agreements ...	3599
7.1.5 Burden of proof.....	3600
7.1.6 Order of analysis .....	3602
7.2 The Question of Whether the Panel Should Refrain from Examining Guatemala's Claims.....	3604
7.2.1 Introduction .....	3604
DSR 2015:VII	3567

Report of the Panel

7.2.2	The content of the FTA and its legal status .....	3605
7.2.2.1	Chronology of events relating to the negotiation and entry into force of the FTA .....	3605
7.2.2.2	Content of the FTA .....	3606
7.2.3	Main arguments of the parties.....	3609
7.2.3.1	Peru .....	3609
7.2.3.2	Guatemala .....	3611
7.2.4	Main arguments of the third parties .....	3613
7.2.4.1	Argentina .....	3613
7.2.4.2	Brazil.....	3614
7.2.4.3	Colombia.....	3614
7.2.4.4	United States .....	3615
7.2.4.5	European Union .....	3615
7.2.5	Assessment by the Panel.....	3616
7.2.5.1	The principle of good faith under Articles 3.7 and 3.10 of the DSU .....	3618
7.2.5.2	Whether Peru has shown that Guatemala did not initiate the present procedure in good faith .....	3623
7.2.5.3	Conclusion .....	3626
7.3	Description of the Facts .....	3627
7.3.1	History of the Price Range System .....	3627
7.3.2	The PRS and how it operates .....	3631
7.3.2.1	Introduction.....	3631
7.3.2.2	The PRS .....	3631
7.3.2.3	Objectives of the PRS .....	3632
7.3.2.4	Products subject to the PRS .....	3633
7.3.2.5	The methodology for calculating duties or tariff rebates .....	3635
7.3.2.5.1	The floor and ceiling prices .....	3636
7.3.2.5.2	Reference prices .....	3639
7.3.2.5.3	Determination of the duties or tariff rebates .....	3639
7.3.2.6	The historical application of the PRS .....	3642
7.3.2.6.1	Floor and ceiling prices.....	3642
7.3.2.6.2	Reference prices .....	3646

## Peru - Agricultural Products

7.3.2.6.3	The duties and tariff rebates resulting from the PRS .....	3653
7.3.3	Peru's tariff policy and the recording of tariffs in its schedule of concessions .....	3656
7.4	The Question of Whether the Duties Resulting from the PRS Are Inconsistent with Article 4.2 of the Agreement on Agriculture.....	3656
7.4.1	Introduction .....	3656
7.4.2	Main arguments of the parties .....	3657
7.4.2.1	Guatemala's claim.....	3657
7.4.2.1.1	The duties resulting from the PRS are variable import levies or measures similar to variable import levies .....	3657
7.4.2.1.2	The duties resulting from the PRS constitute minimum import prices or measures similar to minimum import prices .....	3663
7.4.2.2	Peru's defence .....	3665
7.4.2.2.1	The duties resulting from the PRS are ordinary customs duties .....	3665
7.4.2.2.2	The duties resulting from the PRS are not variable import levies or minimum import prices .....	3666
7.4.3	Main arguments of the third parties .....	3671
7.4.3.1	Argentina .....	3671
7.4.3.2	Brazil .....	3671
7.4.3.3	Colombia .....	3672
7.4.3.4	Ecuador .....	3673
7.4.3.5	United States .....	3673
7.4.3.6	European Union .....	3675
7.4.4	Assessment by the Panel .....	3676
7.4.4.1	Article 4.2 of the Agreement on Agriculture .....	3676
7.4.4.1.1	Content of Article 4.2 of the Agreement on Agriculture .....	3676

---

**Report of the Panel**

---

7.4.4.1.2	Article 4.2 of the Agreement on Agriculture in previous disputes .....	3676
7.4.4.1.3	Objective of Article 4.2 of the Agreement on Agriculture .....	3677
7.4.4.1.4	Scope of Article 4.2 of the Agreement on Agriculture .....	3678
7.4.4.1.5	Relevant terms in Article 4.2 of the Agreement on Agriculture.....	3679
7.4.4.2	The question of whether the duties resulting from the PRS are variable import levies, minimum import prices or similar border measures .....	3688
7.4.4.2.1	General considerations.....	3688
7.4.4.2.2	Structure of the analysis.....	3688
7.4.4.2.3	Whether the duties resulting from the PRS are border measures.....	3689
7.4.4.2.4	The question of whether the duties resulting from the PRS are variable import levies or measures similar to variable import levies.....	3690
7.4.4.2.5	The question of whether the duties resulting from the PRS are minimum import prices or measures similar to minimum import prices .....	3700
7.4.4.2.6	Conclusion .....	3704
7.4.4.2.7	The question of whether the duties resulting from the PRS are ordinary customs duties.....	3704
7.5	The Question of Whether the Duties Resulting from the PRS Are Inconsistent with the Second Sentence of Article II:1(b) of the GATT 1994 .....	3705
7.5.1	Introduction.....	3705
7.5.2	Main arguments of the parties.....	3705
7.5.2.1	Guatemala's claim .....	3705
7.5.2.2	Peru's defence .....	3709
7.5.3	Main arguments of the third parties .....	3711
7.5.3.1	Colombia.....	3711

	Peru - Agricultural Products
7.5.3.2	United States ..... 3711
7.5.3.3	European Union ..... 3712
7.5.4	Assessment by the Panel ..... 3713
7.5.4.1	Introduction ..... 3713
7.5.4.2	The obligation under the second sentence of Article II:1(b) of the GATT 1994 ..... 3714
7.5.4.3	Definition of "other duties or charges" ..... 3715
7.5.4.3.1	"Other duties or charges" and the internal taxes of Article III:2 of the GATT 1994 ... 3717
7.5.4.3.2	"Other duties and charges" and anti-dumping duties ..... 3718
7.5.4.3.3	"Other duties and charges" and "fees or charges for services rendered" ..... 3718
7.5.4.3.4	"Other duties or charges" and Article 4.2 of the Agreement on Agriculture ..... 3719
7.5.4.4	Assessment of "other duties or charges" in accordance with the obligations contained in the Understanding on the Interpretation of Article II:1(b) of the GATT 1994 ..... 3722
7.5.4.5	Conclusion ..... 3723
7.6	The Question of Whether Peru Has Acted Inconsistently with Article X:1 of the GATT 1994 ..... 3724
7.6.1	Introduction ..... 3724
7.6.2	Main arguments of the parties ..... 3724
7.6.2.1	Guatemala's claim ..... 3724
7.6.2.2	Peru's defence ..... 3725
7.6.3	Main arguments of the third parties ..... 3727
7.6.3.1	United States ..... 3727
7.6.3.2	European Union ..... 3727
7.6.4	Assessment by the Panel ..... 3727
7.6.4.1	Introduction ..... 3727
7.6.4.2	The publication requirement under Article X:1 of the GATT 1994 ..... 3728
7.6.4.2.1	Measures covered by Article X:1 of the GATT 1994 .... 3728

---

**Report of the Panel**

---

7.6.4.2.2	Aspects concerning the type of publication which Members are required to make pursuant to Article X:1 of the GATT 1994....	3730
7.6.4.3	Conclusion .....	3733
7.7	The Question of Whether Peru Has Acted Inconsistently with Article X:3(a) of the GATT 1994 .....	3734
7.7.1	Introduction.....	3734
7.7.2	Main arguments of the parties.....	3734
7.7.2.1	Guatemala's claim .....	3734
7.7.2.1.1	Lack of uniformity and impartiality in applying the rounding method .....	3734
7.7.2.1.2	Lack of reasonableness in observance of the statutory provisions of the Price Range System.....	3734
7.7.2.2	Peru's defence .....	3736
7.7.3	Main arguments of the third parties – European Union .....	3737
7.7.4	Assessment by the Panel.....	3738
7.7.4.1	Article X:3(a) of the GATT 1994 .....	3738
7.7.4.2	General considerations.....	3738
7.7.4.3	Measures covered.....	3738
7.7.4.4	Meaning of administration.....	3739
7.7.4.5	The requirement of reasonableness.....	3740
7.7.4.6	Conclusion .....	3741
7.8	Alternative Claim under the Customs Valuation Agreement...	3742
7.9	The Question of Whether, by Means of the FTA, the Parties Modified their WTO Rights Between Themselves .....	3742
7.9.1	Introduction.....	3742
7.9.2	Main arguments of the parties.....	3743
7.9.2.1	Peru .....	3743
7.9.2.2	Guatemala .....	3744

	Peru - Agricultural Products
7.9.3	Main arguments of the third parties ..... 3746
7.9.3.1	Brazil ..... 3746
7.9.3.2	United States ..... 3747
7.9.3.3	European Union ..... 3747
7.9.4	Assessment by the Panel ..... 3748
7.10	Special and Differential Treatment ..... 3749
8.	CONCLUSIONS AND RECOMMENDATION ..... 3750

## LIST OF ANNEXES

### ANNEX A

#### WORKING PROCEDURES OF THE PANEL

Contents	Page
Annex A Working Procedures of the Panel	3753

### ANNEX B

#### ARGUMENTS OF THE PARTIES

##### GUATEMALA

Contents	Page
Annex B-1 First part of the executive summary of the arguments of Guatemala	3761
Annex B-2 Second part of the executive summary of the arguments of Guatemala	3778

##### PERU

Contents	Page
Annex B-3 First part of the executive summary of the arguments of Peru	3796
Annex B-4 Second part of the executive summary of the arguments of Peru	3815