PERU – AGRICULTURAL PRODUCTS¹
(DS457)

**PARTIES** | **AGREEMENT** | **TIMELINE OF THE DISPUTE**
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Complainant | Guatemala | Establishment of Panel 23 July 2013
Respondent | Peru | Circulation of Panel Report 27 November 2014

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue**: Peru’s Price Range System (PRS), which resulted in the imposition of an additional duty, when the reference price for an affected product was lower than its floor price, or a tariff reduction, when the reference price exceeded the ceiling price (in practice, tariff reductions were rare, because Peru’s applied tariff for most of the relevant products was zero per cent).

- **Products at issue**: Rice, maize, milk, and sugar.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **AA Art. 4.2, footnote 1 (market access)**: The Appellate Body upheld the Panel’s finding that the additional duties resulting from the PRS constituted variable import levies, or at least a border measure similar to variable import levies, within the meaning of footnote 1 of the AA, and that, by maintaining such a measure, Peru had acted inconsistently with Art. 4.2.

- **GATT Art. II:1(b) (schedules of concessions)**: The Appellate Body upheld the Panel’s finding that the additional duties resulting from the PRS constituted other duties or charges imposed on or in connection with the importation, within the meaning of the second sentence of Art. II:1(b), and that, by applying such a measure without having recorded it in its schedule of concessions, Peru had acted inconsistently with the second sentence of Art. II:1(b).

- **AA footnote 1 (minimum import prices)**: The Appellate Body reversed the Panel’s finding that the measure at issue did not constitute a minimum import price, or a border measure similar to a minimum import price, within the meaning of AA footnote 1. The Appellate Body, however, was unable to complete the legal analysis to determine whether the measure constituted a minimum import price or a border measure similar to a minimum import price within the meaning of footnote 1.

3. OTHER ISSUES

- **Good faith (DSU Arts. 3.7 and 3.10)**: The Appellate Body upheld the Panel’s finding that there was no reason for the Panel to refrain from assessing the claims put forward by Guatemala, since there was no evidence that Guatemala had brought the proceedings in a manner contrary to good faith.

- **Standard of review (DSU Art. 11)**: The Appellate Body found that the Panel had not acted inconsistently with Art. 11 in its examination of Guatemala’s claims under AA Art. 4.2 and GATT Art. II:1(b).

- **Vienna Convention and International Law Commission**: The Appellate Body also found that the Panel had not committed a legal error by not taking into account, in accordance with Art. 31(3) of the Vienna Convention on the Law of Treaties, a free trade agreement between Peru and Guatemala and Arts. 20 and 45 of the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts, when interpreting AA Art. 4.2 and GATT Art. II:1(b).

- **Trade regulations**: GATT Arts. X:1 (prompt publication) and X:3(a) (uniform, impartial and reasonable administration): In a decision that was not appealed, the Panel refrained from making additional findings under Arts. X:1 and X:3(a).

- **Panel and Appellate Body recommendations (DSU Art. 19.1)**: Pursuant to Art. 19.1, the Panel recommended that Peru bring the challenged measure into conformity with its obligations under the AA and the GATT 1994. The Panel did not consider it appropriate to suggest, as requested by Guatemala, that the proper way of implementing its recommendation was the elimination of the PRS.

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¹ Peru – Additional Duty on Imports of Certain Agricultural Products