

**ARGENTINA - ANTI-DUMPING DUTIES ON FASTENERS
AND CHAINS FROM PERU**

Request for Consultations by Peru

The following communication, dated 19 May 2010, from the delegation of Peru to the delegation of Argentina and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My country's authorities have instructed me to request the holding of consultations with Argentina pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII.1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement"), with regard to the definitive anti-dumping duties imposed by Argentina on imports of separable and non-separable fasteners and chains from Peru and the investigation that led to application of the duties.

A. MEASURES IN QUESTION

1. Initiation of the investigation

On 29 April 2008, the Secretariat of Industry, Trade and Small and Medium-Sized Enterprises declared admissible the initiation of an investigation into imports from China and Peru.¹ The initiation of the dumping investigation was based on evidence of the normal value concerning a retail transaction that did not appear to be representative of domestic sales in Peru. Moreover, the evidence did not appear to be representative either of total transactions for the period, the numerous types of the product in question, the volumes or an appropriate level of trade that would enable a fair comparison to be made with the evidence used to determine the export price.²

¹ SICPYME Resolution 120/08 of the Secretariat of Industry, Trade and Small and Medium-Sized Enterprises of the Ministry of the Economy and Production, dated 29 April 2008, published in the Official Journal of 5 May 2008, declaring admissible the opening of an investigation into imports of fasteners and chains from China and Peru ("initiation resolution"), and inadmissible the opening of an investigation into imports from Chinese Taipei.

² Report on the feasibility of opening an investigation into the alleged dumping of exports of fasteners and chains to the Argentine Republic ("initial dumping examination"), folios 889, 890, 892, 909 and 910.

In addition, with respect to injury, the decision to initiate the investigation was based on a request which, in Peru's view, did not contain sufficient evidence to justify its initiation, and on assumptions that did not appear to be supported by this evidence.³

2. Provisional application of anti-dumping duties

On 15 January 2009, the Ministry of Production issued the preliminary resolution.⁴ The preliminary determination of dumping was based solely on the information available, without taking into account the information requested by the investigating authority and furnished by the exporter investigated within the time-limit given. A dumping margin of 483.06 per cent was thus determined.⁵ Moreover, the preliminary determination of injury was based on a claim of threat of material injury caused by imports from Peru.⁶ As a result, the preliminary resolution determined an anti-dumping duty of 33 per cent on imports from Peru entering under tariff headings 9607.11.00, 9607.19.00 and 9607.20.00 of the MERCOSUR Common Nomenclature.

3. Definitive application of anti-dumping duties

On 30 September 2009, the Ministry of Production issued the final resolution.⁷ The definitive determination of dumping was based on a determination of the normal value and on a calculation methodology which Peru does not consider appropriate. As a result of this determination, a dumping margin of 21.48 per cent was decided for the product investigated.⁸ In addition, the definitive determination of injury was made in respect of the product investigated as a whole and the injury caused by imports from Peru was adduced. There was no evaluation of all the relevant factors of material injury or how each and every one of these factors was affected by the alleged threat of injury.⁹

Moreover, in Peru's view, there was no examination of non-attribution of injury to other factors that had a bearing on the state of the industry such as increased costs and operational expenditure in the domestic industry itself.¹⁰

Although the dumping margin determined for the product investigated was 21.48 per cent, the final resolution imposed differentiated *ad valorem* anti-dumping duties of (i) 23.61 per cent for

³ Act No. 1281 of 19 March 2008 of the National Foreign Trade Commission of the Ministry of the Economy and Production ("initial examination of injury"), folios 927 to 932.

⁴ Resolution 6/2009 of the Ministry of Production, dated 15 January 2009, published in the Official Journal of 22 January 2009, imposing provisional *ad valorem* anti-dumping duties on imports of fasteners and chains from China and Peru ("preliminary resolution").

⁵ Report of the Directorate for Unfair Competition of the National Directorate for the Management of Foreign Trade of the Ministry of the Economy and Production, of 24 September 2008, containing the "preliminary determination of the dumping margin in exports of fasteners and chains from the People's Republic of China and the Republic of Peru to the Argentine Republic" ("preliminary determination of dumping"), folio 3054.

⁶ Act No. 1330 of the National Foreign Trade Commission of the Ministry of the Economy and Production containing the preliminary determination of threat of injury in respect of imports of fasteners and chains from Peru, as well as material injury in respect of imports from China ("preliminary determination of injury").

⁷ Ministry of Production Resolution 409/2009 of 30 September 2009, published on 7 October 2009.

⁸ Report on the final determination of the dumping margin in the investigation into alleged dumping in exports of fasteners and chains from the People's Republic of China and the Republic of Peru to the Argentine Republic ("definitive determination of dumping"), folios, 4743.

⁹ Act No. 1464 of 21 August 2009 of the National Foreign Trade Commission of the Ministry of Production ("definitive determination of injury"), folios 7104-7109.

¹⁰ *Ibid.*

imports of all non-separable fasteners in bronze from Peru, and (ii) 77.24 per cent for imports of all separable and non-separable fasteners and chains manufactured by plastic injection under tariff headings 9607.11.00, 9607.19.00 and 9607.20.00 of the MERCOSUR Common Nomenclature.¹¹

B. LEGAL BASES FOR THE COMPLAINT

Article 1 of the Anti-Dumping Agreement provides that "An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this [Anti-Dumping] Agreement." In addition, Article 18.1 of the Agreement also states that "No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement."

In the light of these obligations and others incumbent upon Argentina under Article VI of the GATT and the Anti-Dumping Agreement, Peru is deeply concerned about certain aspects of the measures imposed by Argentina and the investigation that led to their application, such as the methodology, calculations, comparisons, determinations, procedures or practices, undertaken or used by Argentina during the investigation and for the application of the aforementioned measures.

1. Claims concerning the initiation of the investigation:

- (a) The request for initiation of an investigation did not contain sufficient evidence of dumping, injury or a causal relationship to justify the initiation of an investigation. Despite this, Argentina initiated the investigation without properly determining whether the request contained sufficient evidence to justify its initiation, without having properly examined the accuracy and adequacy of the evidence provided in the request, including evidence on the relevant adjustments that would have enabled a fair comparison to be made between the normal value and the export price. Argentina's failure to do so appears to be contrary to Article 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement.

2. Claims concerning the preliminary determinations and the provisional application of anti-dumping duties:

- (b) Argentina based itself on the known facts to determine the dumping margin of the Peruvian exporter investigated without taking into account the information furnished by the exporter investigated for this purpose within the time-limit given by the investigating authority. Consequently, Argentina did not properly comply with the procedures laid down in Article 6.8 and 6.13, and Annex II, of the Anti-Dumping Agreement, in particular paragraphs 3, 5, 6 and 7 of the Annex, which appears to be contrary to the terms of these provisions, as well as Article 2.1, 2.2 and 2.4 of the Anti-Dumping Agreement, as regards the need for a fair comparison between the export price and the normal value of the product.
- (c) Argentina determined the threat of injury to the domestic industry without examining all the factors required by Article 3.4. In any event, Argentina determined injury based on conjectures regarding the alleged threat of injury caused by imports from Peru. These determinations appear to be inconsistent with Article 3.1, 3.4 and 3.7 of the Anti-Dumping Agreement.

¹¹ Ministry of Production Resolution 409/2009 of 30 September 2009, published on 7 October 2009, Articles 5 and 6, and Annex II.

- (d) In addition, Argentina did not examine non-attribution of injury caused by other known factors and even recognized that they had an effect on the situation of the domestic industry. This omission appears inconsistent with Article 3.1, 3.4, 3.5 and 3.7 of the Anti-Dumping Agreement.

3. Claims concerning the definitive determination of injury, threat of injury and causal relationship:

- (e) Argentina determined the threat of injury to the domestic industry without basing itself on positive evidence and without having undertaken an unbiased and objective evaluation of all and each of the factors of injury listed in Article 3.4. Moreover, with regard to certain factors taken into account, Argentina did not determine or evaluate the occurrence of future clearly foreseen and imminent events in order to substantiate the determination of threat of injury. All these omissions appear to be inconsistent with Article 3.1, 3.2, 3.4 and 3.7 of the Anti-Dumping Agreement.
- (f) Argentina determined the threat of injury to the domestic industry without basing itself on positive evidence and without having undertaken an unbiased and objective evaluation of all and each of the threat of injury factors listed in Article 3.7 in connection with the factors listed in Article 3.4 of the Anti-Dumping Agreement. These omissions appear to be inconsistent with Article 3.1, 3.2, 3.4, 3.7 and 3.8 of the Anti-Dumping Agreement.
- (g) Argentina determined the existence of a causal relationship between the dumping and the threat of injury to the domestic industry without having properly examined any known factors other than the dumped imports. These include increased costs, expenditure and investment in the domestic industry. It did not find either that the injury caused by these other known factors had not been attributed to the imports investigated. These omissions appear to be inconsistent with Article 3.1, 3.2, 3.4, 3.5 and 3.7 of the Anti-Dumping Agreement.

4. Claims concerning the application of the anti-dumping duties:

- (h) Although it was determined that the dumping margin for the product investigated was 21.48 per cent, the final resolution imposed definitive anti-dumping duties in an amount higher than the said margin, at an *ad valorem* level of 23.61 per cent on imports of all non-separable fasteners in bronze from Peru and 77.24 per cent on imports of all separable and non-separable fasteners and chains manufactured by plastic injection. The determination of the anti-dumping duties thus appears inconsistent with Articles 9.1, 9.2, 9.3 and 3.8 of the Anti-Dumping Agreement.
- (i) It would appear that Argentina determined the two levels of anti-dumping duties on the basis of differentiated dumping margins for the products: (i) non-separable bronze fasteners and (ii) separable and non-separable chains and fasteners manufactured by plastic injection. Peru notes that both the determination of the similar product, the domestic industry, the threat of injury and the causal relationship were based on a single investigated and similar product without making any distinction between the two aforementioned products. Moreover, Peru also notes that definitive determination of dumping based on two products would not be consistent with determinations of threat of injury and causal relationship based on one product alone.

Peru therefore considers that the determinations of similar product, domestic industry, dumping, threat of injury and the causal relationship between the alleged dumping and threat of injury are inconsistent with Articles 2.1, 2.6, 4.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7 and 3.8 of the Anti-Dumping Agreement.

- (j) In addition, Argentina decided to enforce the security on the provisional anti-dumping measures and levy anti-dumping duties retroactively for the period during which the provisional measures applied despite the fact that it only made a definitive determination of threat of injury with respect to imports from Peru. This action is inconsistent with Article 10.2 and 10.4 of the Anti-Dumping Agreement.

5. Claims concerning procedural matters:

- (k) Although the period for providing evidence had concluded and the interested parties had been informed of the essential facts to be used as a basis for the decision on whether or not to apply definitive measures, Argentina accepted new information provided by the Complainant regarding the situation of the exporter investigated. Based on this information, it issued a new report on the essential facts that became the basis for the definitive determination. The authorities did not, however, satisfy themselves as to the accuracy of this information. Consequently, accepting the information submitted by the Complainant after the declaration of the essential facts and their utilization, without proper verification, is inconsistent with Article 6.6, 6.7 and 6.9 of the Anti-Dumping Agreement.
- (l) In its resolution on initiation, its preliminary and final resolutions, Argentina did not disclose in sufficient detail the findings and conclusions it had reached on all issues of fact and law considered material by the Argentine authorities including, *inter alia*: the reasons for accepting the evidence of normal value in Peru submitted by the Complainant and the reasons why it assumed the existence of injury; the reasons why it did not take into account the time-limits given to the exporter investigated for submitting its information before making the preliminary determination; and the reasons why it found that there was threat of injury without having examined each and every one of the factors of injury and threat of injury, as required by Article 3. These omissions are inconsistent with Article 12.1 and 12.2 of the Anti-Dumping Agreement.

Peru also reserves the right to raise other matters concerning the measures in question during the consultation procedure.

Peru awaits with interest your reply to this request as soon as possible so as to reach a mutually satisfactory solution. It therefore proposes that the consultations be held in Geneva and that our respective missions agree on a convenient date and place for holding the consultations.

I take this opportunity, Mr Ambassador, to renew the assurances of my highest consideration.
