

Statement by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, July 31, 2015

1. PERU – ADDITIONAL DUTY ON IMPORTS OF CERTAIN AGRICULTURAL PRODUCTS
 - A. REPORT OF THE APPELLATE BODY (WT/DS457/AB/R AND WT/DS457/AB/R/Add.1) AND REPORT OF THE PANEL (WT/DS457/R)
 - The United States thanks the Panel and Appellate Body for their efforts in this dispute. We would like to offer just a few observations on the reports.
 - We note that the Panel and Appellate Body reports provide important guidance on the meaning and application of the terms “variable import levies” and “minimum import prices” in footnote 1 of Article 4.2 of the *Agreement on Agriculture*.
 - In particular, the Appellate Body confirmed that a “necessary and key element” of variable import levies is their inherent variability, based on a scheme or formula that causes and ensures that levies change continuously and automatically. The Appellate Body noted that variable import levies may have certain “additional features,” such as lack of transparency and predictability, but cogently reasoned that these features are not independent or absolute characteristics that a variable import levy must display. Instead, these additional features may serve to *confirm* that a measure is inherently variable.
 - This is an important development and clarification, particularly in light of language from previous Appellate Body reports in the *Chile – Price Band* dispute that some Members had taken to indicate that lack of transparency and predictability were necessary elements.
 - We also note the Appellate Body’s rejection of Peru’s argument that it was permitted to maintain its WTO-inconsistent price range system based on the terms of the Peru-Guatemala FTA, which is not in force. As the Appellate Body observed, an FTA cannot amend or modify provisions of the WTO Agreements. The proper route for assessing whether a provision in an FTA may permit a departure from WTO rules are the legal provisions specifically addressing regional trade agreements: Article XXIV of the GATT 1994, Article V of the GATS, and the Enabling Clause.
 - Yet Peru did not rely on any of these provisions, and conceded that an agreement that is not in force cannot benefit from a defense under Article XXIV. The Appellate Body also appropriately declined to accept the argument that Article 4.2 of the *Agreement on Agriculture* should be “interpreted” in light of this FTA.
 - In rejecting these arguments, the Appellate Body refrained from addressing certain issues of interpretation and public international law raised by Peru that were not necessary to resolve the dispute. This approach allowed the Appellate Body to issue a concise, high-

quality report, and the United States appreciates these efforts. As we have noted previously, such an approach promotes the efficient resolution of disputes and helps to mitigate the workload problems currently facing the WTO dispute settlement system.