**National Institution for the Defense of Competition and the Protection of Intellectual Property (INDECOPI)**

Initiation of the investigation for alleged practices of subsidies on exports to Peru of yellow corn, originating in the United States of America, which enter in under the tariff code 1005.90.11.00.

Commission on Dumping, Subsidies, and the Elimination of Non-Tariff Trade Barriers

Resolution Number 088-2018/CBD-INDECOPI

Lima, June 13, 2018

Commission on Dumping, Subsidies, and the Elimination of Non-Tariff Trade Barriers of INDECOPI

Summary:

This office initiates the investigation procedure for alleged practices of subsidies on yellow corn exports to Peru originating in the United States of America. It has found existence of reasonable evidence to verify the granting of aid by the government of the United States of America to yellow corn growers of that country, during the period January – December of 2017, which would qualify as actionable subsidies, as established in article 1 of the Agreement on Subsidies and Countervailing Measures (ASCM) of the World Trade Organization (WTO). Also, the Commission has verified the existence of reasonable indications that indicate that domestic producers of yellow corn have suffered significant damage, due to allegedly subsidized imports of said product originating in the United States of America in the Period of January 2015-December 2017, in accordance with the provisions of article 15 of the ASCM.

Having seen, File No. 025-2018 / CDB ;, and

Considering

1. Background

In compliance with the functions assigned as the national investigating authority responsible for preventing and correcting distortions in competition generated by the importation of products that can be subject to alleged dumping or subsidies, the Commission of Dumping, Subsidies and Elimination of Non-Tariffs Trade Barriers of Indecopi (hereinafter, the Commission) has developed monitoring systems for national markets of various agricultural products, among them, yellow corn[[1]](#footnote-1), due to the relevance of this sector for national production.

In this framework, the Commission has compiled public information on various aid programs that are in force in the United States of America (hereinafter, United States) in relation to the cultivation of yellow corn in that country, the evolution of imports of said product in Peru and the economic situation of the domestic producers of such products.

Considering that based on the information collected, an increase in shipments of U.S. yellow corn to Peru has been observed, which could be causing significant damage to domestic producers of said product, on June 12, 2018, the Commission decided to convene the government authorities of the aforementioned country to holding consultations aimed at elucidating the situation regarding the existence of possible practices of subsidies on yellow corn exports to Peru originating in the United States, as to what is established in Article 13.1 of the Agreement on Subsidies and Countervailing Measures (hereinafter, ASCM) of the World Trade Organization (hereinafter, WTO)[[2]](#footnote-2).

On July 2, 2018, the consultation was held between the Commission and the authorities of the government of the United States, through videoconference. Also in attendance in this meeting, in observer status, were officials of the Ministry of Agriculture and Irrigation (hereinafter, MINAGRI), the Ministry of Foreign Affairs and the Ministry of Foreign Trade and Tourism [MINCETUR].

Having complied with the consultation requirement prior to the start of the investigation, as stipulated in Article 13.1 of the ASCM, it is necessary to analyze whether in this case the requirements to start an ex officio investigation into the existence of alleged subsidies on yellow corn exports to Peru, in accordance with the provisions of paragraph 6 of Article 11 of the ASCM, as well as Article 23 of Supreme Decree No. 006-2003-PCM, modified by Supreme Decree No. 004-2009-PCM (hereinafter, Regulation on Antidumping and Compensation Measures).

1. The Procedure for the Investigation of Subsidies

The ASCM provides that investigations for alleged subsidy practices may be initiated upon request by the domestic industry (hereinafter, RPN), or on the initiative of the investigating authority. In the latter case, paragraph 6 of the Article 11 of the ASCM provides that, in special circumstances, the competent authority may initiate an investigation without having received a request from the domestic industry, in case there is sufficient evidence of the existence of a subsidy, the damage and the causal relationship that justify the initiation of the investigation[[3]](#footnote-3).

In this regard, it is considered that there are "special circumstances" when the domestic industry of the product similar to the imported is not organized, is fragmented or merits national interest, among other similar circumstances, as established in Article 23 of the Regulation on Anti-dumping Measures and Compensatory.[[4]](#footnote-4)

In the present case, the national productive sector of yellow corn is characterized by a high level of fragmentation, since it is made up of a large number of small scale producers[[5]](#footnote-5). There is also a low level of organization among national producers, who for the most part do not join associations that are representative of that sector.[[6]](#footnote-6) In addition, the relevance the yellow corn sector to the national economy should be considered, due to its role in employment and in the development of the corn-poultry-pig-farming chain (which is one of the main productive chains in the country)[[7]](#footnote-7).

In view of the factors mentioned above, it is concluded that there are special circumstances that, in this particular case, merit that the Commission evaluate whether it is appropriate to initiate ex officio an investigation for alleged subsidy practices in shipments to Peru of yellow corn originating in the United States.

Therefore, the following will analyze if the legal requirements for these effects are met, that is to say, if there is sufficient evidence of the subsidy, the damage and the causal relationship that justify the initiation of an investigation ex officio, in accordance with the provisions of Articles 11.6 of the ASCM and 23 of the Regulations on Antidumping and Compensatory Measures.

1. Analysis

As developed in Report N ° 026-2018 /CDB-INDECOPI prepared by the Technical Secretariat of the Commission, according to the information available in this initial evaluation stage, it is concluded that locally produced yellow corn and yellow corn imported from the United States can be considered as similar products, in the terms established in footnote 46 of the ASCM[[8]](#footnote-8). Thus, since both products share substantially similar physical characteristics; they are prepared following a similar productive process; they have the same uses; they use similar inputs; they are placed in the market under similar marketing channels; and, are classified under the same tariff code.

The analysis carried out in Report Nº 026-2018 / CDB-INDECOPI takes into consideration the period between January and December 2017 for the determination of the existence of evidence of the alleged practices of subsidies, as well as the period between January 2015 and December 2017 for the determination of the existence of evidence of possible damage and the causal link.

In this case, it is initially determined that there is the existence of aid provided to producers of yellow corn in the United States by the United States Government, through the following programs: (i) Export Credit Guarantee Program (GSM-102); (ii) Agricultural risk coverage; (iii) Price Loss Coverage; (iv) Marketing Loans; (v) Crop insurance; (vi) Supplemental coverage option; (vii) Farm ownership Loans; (viii) Operating loans; and, (ix) Guaranteed Farm Loans[[9]](#footnote-9). These programs are regulated in the United States legislation, under the Agricultural Law of 2014[[10]](#footnote-10), as well as in the Code of Federal Regulations 2014[[11]](#footnote-11).

As developed in section C of Report Nº 026-2018 / CDB-INDECOPI, the assistance granted by the government of the United States under the nine (9) aforementioned programs can constitute specific financial contributions[[12]](#footnote-12) [[13]](#footnote-13), which provide a benefit to the American agricultural producers who receive them. Therefore, it is reasonable to conclude, initially, that such programs qualify as actionable subsidies within the meaning of the ASCM.

In relation to the amount of the alleged subsidies conferred by the United States government on yellow corn, at this stage of the initial evaluation, information is available that allows estimating it only with respect to five (5)[[14]](#footnote-14) of the (9) programs in question[[15]](#footnote-15). This amount reaches US $17.2 per ton for the January-December 2017 period, which greatly exceeds the de minimis margin (1%) foreseen in article 11.9 of the ASCM[[16]](#footnote-16), since it is equivalent to 10.6% with respect to the average FOB price of the exports to Peru of said agricultural product in the period indicated above.

On the other hand, as explained in section E of Report Nº 026-2018 / CDB-INDECOPI, reasonable indications have been found that allow us to infer that domestic producers of yellow corn have experienced significant damage during the period 2015 - 2017, under the terms provided in article 15 ASCM, due to the entry into Peru of imports of said product originating in the United States at supposedly subsidized prices. This conclusion is based on the following considerations:

(i) Regarding the evolution of the volume of imports of yellow corn originating in the United States, it has been estimated that, during the period of analysis, imports of this product of US origin experienced a significant increase, both in absolute terms and in relative terms to production and domestic consumption. Indeed, from the review of the information available in this stage of the procedure, the following is observed:

* In absolute terms, the volume of imports of yellow corn of US origin recorded an accumulated annual growth of 52.8% during the period 2015 - 2017 (equivalent to an average annual increase of 23.6%), going from 2,130 thousand tons in 2015 to 3,255 thousand tons
* In relative terms to national consumption, the share of U.S. yellow corn imports to the local market increased 19 percentage points during the period 2015 - 2017, reaching its maximum level in that last year (2017), at 71%. Similarly, in terms relative to domestic production, it has been noted that the proportion of imports of the product from the United States with respect to national production went from 148% in 2015 to 264% in 2017.

(ii) In relation to the effect of imports on the prices of the domestic product, the evidence available at this initial evaluation stage allows us to infer: (i) the existence of significant undervaluation of the price of the product imported from the United States in relation to the price of the domestic product; and, (ii) a containment of the sale prices of the national yellow corn. In effect, from the review of the information available in this stage of the procedure, the following is observed:

* Effect of price undercutting: between 2015 and 2017, the national annual average price of imports of yellow corn of US origin remained below the average annual sales price of the domestic product, registering an average undercutting margin of 28% during the period of analysis, which went from 21% in 2015 to 33% in 2017.
* Price containment effect: between 2015 and 2017, the average annual price of imports of US yellow corn was steadily reduced (on average, -6.4% each year), unlike the average annual domestic sales price of domestic yellow corn which registered an increase of 2.9%, although in that same period, the average annual cost of said product increased 14.6%. The latter led to the profit margin obtained by the national producers of yellow corn from positive to negative levels in the period indicated above.

Thus, when reviewing the data in detail, it can be seen that, although the average cost and the average price of national yellow corn registered a similar trend between 2015 and 2016 (both increased by 2.7% and 3.8%, respectively), in 2017 the average cost of production increased by 11.6% in relation to 2016, reflecting an increase in the average price annual internal sales, since said price recorded a negative variation of 0.9%

Thus, in the final and most recent part of the period of analysis (January - December 2017), the entry of imports of yellow corn of US origin to the Peruvian market would have had the effect of containing the average annual sales price of national producers, since this price could not be located above the average cost of production, which caused these producers to register a negative profit margin in 2017 (-4.4%).

(iii) With respect to the impact of imports of US origin on the performance of domestic yellow corn producers, based on a comprehensive evaluation of the information available at this initial evaluation stage, it is reasonable to infer that these producers would have experienced a situation of significant damage during the period 2015 - 2017, since its main economic indicators experienced a negative behavior during the period indicated above. This conclusion is based on the following considerations:

* The harvested area of ​​yellow corn at the national level decreased, in accumulated terms, 12% during the period 2015 - 2017 (equivalent to an average annual reduction rate of 6.4%). Between 2015 and 2016 (When the average annual price of domestic sales of domestic yellow corn increased in line with the average cost of production of that product), the harvested area contracted 10.1%. Then, in 2017, the harvested area decreased 2.6% with respect to 2016, in a context in which the national yellow corn market increased 8% between those two years (2016 – 2017).
* Domestic production and sales of domestic yellow corn producers registered a cumulative reduction of 14% during the analysis period (equivalent to an average annual reduction rate of 7.4%), in line with the evolution of the area harvested (-12%). Between 2015 and 2016 (when the average annual price of domestic sales of national yellow corn increased in line with the average cost of production of that product), both indicators decreased 14.4%. Then, in 2017, domestic production and sales remained practically at the same level as in 2016 (registering a positive variation of 0.2%), in a context in which the national yellow corn market increased 8% between these two years (2016 - 2017).
* In line with the decrease experienced by the production indicator, the use of the installed capacity of yellow corn was reduced by 10 percentage points between 2015 and 2017, going from 74% to 64%.
* The market share of the national industry registered a sustained reduction between 2015 and 2017, having reported a reduction of 8 percentage points in accumulated terms in that period (it went from 35% in 2015 to 27% in 2017). In this context the internal demand of said product maintained a growing tendency to register an accumulated increase of 12% between 2015 and 2017, while the volume of imports of yellow corn of US origin registered an accumulated growth of 52.8% during the same period. Due to this, imports originating in the United States have been established as the main source of supply for yellow corn in the Peruvian market, going from a market share of 52% in 2015 to a market share of 71% in 2017.
* The indicators of productivity and employment have registered an accumulated decrease of 2% and 12%, respectively, during the analysis period. On the other hand, the salary, which is reflected in the daily wage payment experienced an accumulated increase of 12% between 2015 and 2017, which coincided with a 13.3% increase in the minimum vital remuneration decreed in Peru in May 2016.
* With respect to the factors that affect the domestic sales prices, it has been observed that the average cost of production of the national yellow corn registered a cumulative increase of 14.6% between 2015 and 2017, while the average annual sales price of the Domestic producers experienced an accumulated growth of 2.9% in that same period. However, in the last year of the period of analysis (2017), the average cost of production of the national yellow corn increased 11.6% compared to 2016, while the average annual sales price of domestic producers registered a negative variation of 0.9%, placing the latter 4.4% below the average cost of production.
* The unit profit margin obtained by the internal sale of yellow corn experienced a drop of 10.7 percentage points between 2015 and 2017, in a context in which domestic sales of national yellow corn and the share of said product in the domestic market was also reduced (-14% and -8 percentage points, respectively). For its part, the amount of operating profit (in US $) obtained by domestic producers for domestic sales of yellow corn went from positive to negative levels during the analysis period (2015 - 2017). In particular, in 2017, such producers recorded losses of around $15 million of dollars.
* Regarding the growth factor, it has been estimated that the national yellow corn market experienced, in cumulative terms, a growth of 12% during the period of analysis (2015 - 2017). Nevertheless, the main economic indicators of the national producers of this crop (harvested area, production, use of installed capacity, sales internal, market share, employment and profits from sales in the domestic market), registered a negative evolution in that same period. Thus, in a context in which the benefits perceived by the domestic producers of yellow corn went from positive to negative levels, the area sown, the production and the use of installed capacity were reduced by 12%, 14% and 10% between 2015 and 2017, respectively, while domestic sales, market share and employment decreased by 14%, 8% and 12%, respectively, in that same period.

Likewise, as explained in Report N ° 026-2018 / CDB-INDECOPI, indications have also been found that allow a reasonable causal relationship to be inferred between the presumed subsidy practices identified in this initial stage of the procedure, and the deterioration observed in the economic situation of the national producers of yellow corn between 2015 and 2017.

In application of article 15.5 of the ASCM, other factors that could have influenced the economic situation of the national producers of yellow corn during the 2015-2017 period have also been evaluated, such as imports of such product originating in third countries, the behavior of domestic demand, the export activity of domestic producers of yellow corn, the evolution of the exchange rate, the tariff reduction in the framework of the Trade Promotion Agreement signed between the United States and Peru, and access to credit. However, from the information available in this initial evaluation stage, no indications have been found that allow inferring that the aforementioned factors explain or contribute to the significant damage that would have experienced the national producers in the period of analysis (2015 - 2017).

In summary, at this stage of initial evaluation, sufficient evidence has been found on alleged subsidy practices for yellow corn originating in the United States exported to Peru, as well as on possible damage to domestic producers of that crop due to the entry into the country of said exports.

According to the evidence analyzed, the possible damage experienced by domestic producers has occurred in a context in which corn shipments from third countries have been virtually displaced from the domestic market by imports from the United States, which indicates that the deterioration of domestic production could be accentuated due to the growing evolution of imports of US corn, and it is therefore necessary that the respective investigation be carried out to determine, in due course, whether or not to apply corrective measures on such imports.

Therefore, it is appropriate to provide for the initiation of an investigation procedure for the purpose of determining the existence of subsidy practices, of injury to domestic producers and of a causal link between the imports subject to such practices and the alleged damage. At the end of this investigation it will be established whether countervailing duties may be imposed on imports of yellow corn originating in the United States.

For purposes of the investigation procedure that is to be initiated by this administrative act, the period between January and December 2017 will be considered for the determination of the existence of indications of the alleged practices of subsidies, as well as the period included in January 2015 and December 2017 for the determination of the existence of indications of damage and causality. This, to the extent that both periods are consistent with the recommendations established by the technical bodies of the WTO.

This administrative act is also motivated by the foundations of the analysis and conclusions of Report N ° 026-2018 / CDB-INDECOPI, which develops in detail the points indicated above; and, which forms an integral part of this Resolution, in accordance with the provisions of Article 6.2 of the Consolidated Text (TUO) of Law No. 27444, approved by Supreme Decree No. 006-2017-JUS.

In accordance with the WTO ASCM, the Regulation on Antidumping and Countervailing Measures, and Legislative Decree No. 1033.

Being in agreement at its session of July 13, 2018;

RESOLVES:

Article 1.- To arrange the initiation of an investigation procedure for alleged subsidy practices in the exports to Peru of yellow corn, originating in the United States of America, which enter in a referential manner under tariff subheading 1005.90.11.00.

Article 2.- Present the beginning of the present investigation procedure to the authorities of the government of the United States of America.

Article 3.- Invite all interested parties to appear before the procedure and present the information and evidence supporting their positions, which may be verified by the Commission in the exercise of the powers established in the Supreme Decree No. 006-2003-PCM, as amended by Supreme Decree No. 004-2009-PCM, and the Agreement on Subsidies and Countervailing Measures of the World Trade Organization, including the in-situ investigations referred to in Annex VI of said Agreement; being able to formulate determinations preliminary or definitive, positive or negative, on the basis of facts available, in case an interested party denies access to the necessary information or does not provide it within a reasonable period of time, in accordance with Article 12.7 of the referred agreement.

All communication made by interested parties must be presented in Spanish, or accompanying a translation to the Spanish language if the communication was presented in a different language, in accordance with the provisions of article 36 of Supreme Decree No. 006-2003-PCM, as amended by Supreme Decree No. 004-2009-PCM; should be directed to the following address:

Comisión de Dumping, Subsidios y Eliminación de Barreras Comerciales No Arancelarias - Indecopi

Calle De La Prosa Nº 104, San Borja

Lima 41, Perú

Teléfono: (51-1) 2247800 (anexo 3001)

Correo electrónico: dumping@indecopi.gob.pe

Article 4º.- Publish this Resolution in the official newspaper "El Peruano" for one (01) time, according to the provisions of article 33 of Supreme Decree No. 006-2003-PCM, as amended by Supreme Decree No. 004-2009-PCM.

Article 5.- To inform the interested parties that, for purposes of the investigation procedure that is established by this administrative act, the period between January and December 2017 for the determination of the existence of subsidies, and the period between January 2015 and December 2017 for the determination of the existence of the damage and the causal relationship.

Article 6.- To inform the interested parties that the period for presenting evidence or allegations is six (6) months after the publication of this Resolution in the newspaper "El Peruano" official, in accordance with the provisions of article 28 of Supreme Decree No. 006-2003-PCM, modified by Supreme Decree No. 004-2009-PCM. This period may be extended for three (3) additional months in accordance with the provisions of the aforementioned device.

Article 7º.- The beginning of the present procedure will be computed from the date of publication of this Resolution in the official newspaper "El Peruano".

With the intervention of the members of the Commission: Renzo Rojas Jiménez, José Guillermo Díaz Gamarra, Peter Barclay Piazza and María Luisa Egúsquiza Mori

Renzo Rojas Jiménez

President

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1. This product does not include seed corn or corn for direction human consumption. [↑](#footnote-ref-1)
2. ASCM, Article 13 – Consultations

13.1. As soon as possible after an application under Article 11 is accepted, and in any event before

the initiation of any investigation, Members the products of which may be subject to such investigation

shall be invited for consultations with the aim of clarifying the situation as to the matters referred to

in paragraph 2 of Article 11 and arriving at a mutually agreed solution. [↑](#footnote-ref-2)
3. ASCM, Article 11 – Initiation and Subsequent Investigation

11.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without

having received a written application by or on behalf of a domestic industry for the initiation of such

investigation, they shall proceed only if they have sufficient evidence of the existence of a subsidy,

injury and causal link, as described in paragraph 2, to justify the initiation of an investigation. [↑](#footnote-ref-3)
4. REGULATIONS ON ANTI-DUMPING AND COUNTERVAILING MEASURES, Article 23.- Initiation of official investigation procedure.- In special circumstances, the Commission may initiate an investigation without having received a written request made by the industry national or on behalf of it. Only the investigation will start when there is sufficient evidence of dumping or subsidization, of injury and of the causal relationship that justifies it. Circumstances will be considered special, when the domestic industry is not organized, is fragmented or merits national interest, among other similar circumstances. [↑](#footnote-ref-4)
5. In the IV National Agricultural Census of 2012 it was verified that 63% of the total of agricultural producers cultivate corn on less than 5 hectares, while 26% cultivate areas between 5 and 20 hectares. In addition, both groups of producers (that is, those who represented the 89% referenced to above) cultivated, collectively, 80% of the total national harvested area of corn. [↑](#footnote-ref-5)
6. In effect, according to the results obtained in the National Agricultural Survey of 2016, at a national level, only 6% of the total agricultural units of this sector reported to belonging to some association, cooperative or committee of producers. [↑](#footnote-ref-6)
7. As explained in section E of Report Nº 026-2018 / CDB INDECOPI, it is estimated that between 2015 and 2017, the corn sector has generated, on average, 23,707,333 annual wages, which represents 75,985 annual jobs, on average. [↑](#footnote-ref-7)
8. ASMC, Article 15.1- Footnote 46.- Throughout this Agreement it will be understood that the term "like product" means a product that is identical, that is, equal in all aspects to the product, or, when that product does not exist, another product that, although it is not the same in all aspects, has characteristics very similar to those of the product under consideration. [↑](#footnote-ref-8)
9. The names of these programs in English are: (i) Export credit guarantee program; (ii) Agriculture risk coverage; (iii) Price loss coverage (iv) Marketing Loans; (v) Crop insurance; (vi) Supplemental coverage option; (vii) Farm Ownership Loans; (viii) Operating Loans; y, (ix) Guaranteed Farm Loans. [↑](#footnote-ref-9)
10. Specifically, in Title 1, sections 1116, 1117, and subtitle B; Title V, Subtitule A and B, Tilte XI, section 11003. With respect to CFR: <https://www.congress.gov/bill/113th-congress/house-bill/2642>. [↑](#footnote-ref-10)
11. In particular, in Title 7, chapture XIV, part 1493 of said legal document. [↑](#footnote-ref-11)
12. Under the modality of direct transfer of funds foreseen in the section i of article 1.1.a.1 of said Agreement. [↑](#footnote-ref-12)
13. That is, accessible to a limited set of branches of production agriculture, including the US corn industry. [↑](#footnote-ref-13)
14. These five (5) Programs are: Agriculture risk coverage; Price loss coverage, Marketing Loans, Crop insurance, Supplemental coverage option. [↑](#footnote-ref-14)
15. Specifically, this information is contained in the document called "Baseline for Farm Programs of 2017", issued by the Budget Office of the Congressional Budget Office; and, in the "2017 Summary Business Report" (Summary of Business Reports), issued by the Risk Management Agency, attached to the Department of Agriculture of the United States. In this regard, see section C of Report Nº 026-2018 / CDB-INDECOPI. [↑](#footnote-ref-15)
16. ASMC, Article 11.9: An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of a subsidy is *de minimis*, or where the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1 per cent ad valorem. [↑](#footnote-ref-16)