

Expediente: 025-2018/CDB

Sumilla: Solicita reprogramación

A LA COMISIÓN DE DUMPING, SUBSIDIOS Y ELIMINACIÓN DE BARRERAS COMERCIALES NO ARANCELARIAS DEL INDECOPI:

U.S. GRAINS COUNCIL, in the investigation procedure for alleged export subsidies of yellow corn from the United States, we say:

By means of the Notification Card of January 10, 2019, the Commission ordered the hearing to be held within the probationary period, to be held on February 20 of this year at 1:45 p.m. in the Indecopi facilities, enclosing the program correspondent.

However, in order to properly present our position at the hearing and fully exercise our right of defense, we respectfully request that the hearing be rescheduled to the week of March 18, 2019, due to circumstances beyond our control and that affect our right to present an adequate defense:

1. As is public knowledge, the government of the United States has remained "closed" since December 2018¹ (prior to notification of the citation), due to disagreements between the Government and Congress regarding the budget for 2019, which had to be approved on December 21, 2018.

This situation has made it impossible for us to obtain official, crucial and sufficient statistical information on the US yellow corn industry from official public entities, which would allow us to present a coherent and supported defense of our position in the oral report hearing.

In the United States, the closure of the administration implies that most of the Government's activities are suspended, including those related to agriculture and foreign trade, since, unlike -for example- national security, they are not considered "essential" for the subsistence of a country.

In particular, the activities of the Department of Agriculture that, expressly, do not continue to be carried out during the closure of the government include:

"[...]"

¹ Cfr. <https://www.elespectador.com/noticias/el-mundo/estados-unidos-mantiene-cierre-de-gobierno-tras-fracaso-de-propuestas-en-senado-articulo-835960>

*Statistics of National Service of Statistics of Agriculture (NASS), Report of estimations of the demand and the world-wide agricultural demand, and other reports and agricultural statistical and economic projections.*¹²

In fact, in its plan on continuity of services planned for the closure of government, it is established that the National Agricultural Statistics Service will only focus on ensuring the suitability of the IT infrastructure to prevent security incidents and subsequent restart failures.³

2. Similarly, it has not been possible to obtain the spaces and schedule the necessary meetings to coordinate with the Government of the United States the main aspects of the case in defense of our legitimate interests, as befits the usual practice. The difficulties for dialogue and the lack of access to relevant information prevents the U.S. GRAINS COUNCIL can present a complete defense, and we can fully answer the doubts and / or questions of the commissioners and other interested parties.

As of yesterday, January 24, the Senate had rejected two draft regulations aimed at ending the closure of the government⁴, thus keeping uncertainty about the resumption of public activities.

Consequently, the circumstances described limit our right, as an interested party, to have ample opportunities to present relevant evidence before the Commission, as provided for in the Agreement on Subsidies and Countervailing Measures. That said, the reprogramming of the requested audience will serve to manage the official information necessary to support our position and coordinate with the officials of the Department of Agriculture, as soon as the closure of the government is lifted.

3. For the same reasons explained in the previous points, the participation of the Government of the United States, which is precisely one of the institutionally most relevant stakeholders, in the procedures where trade defense measures are discussed by Peru, is put at risk, and whose oral presentation is very relevant for the audience debate.
4. For our Association, which represents the vast majority of grain producers in the United States, this procedure is a priority and of great importance, so we ask the Commission to consider setting the new hearing for the week of March 18, 2019 , in which -in addition- our CEO and the most important officials of our guild can be present.

² Translation [...]

³ <https://www.usda.gov/sites/default/files/documents/usda-shutdown-plan-summary-2.pdf>

⁴ [https://www.bbc.com/news/world-us-canada-](https://www.bbc.com/news/world-us-canada-46995694?intlink_from_url=https://www.bbc.com/news/topics/cdwjqx3kw7zt/us-government-shutdown&link_location=live-reporting-story)

[46995694?intlink_from_url=https://www.bbc.com/news/topics/cdwjqx3kw7zt/us-government-shutdown&link_location=live-reporting-story](https://www.bbc.com/news/topics/cdwjqx3kw7zt/us-government-shutdown&link_location=live-reporting-story)

5. Through the same Notice, the Commission decided to extend the probationary period for three additional months; that is, until April 24, 2019, which gives the authority more time to conduct its investigation and the parties to present their arguments.

In that line, a reprogramming of the audience would not affect in any way these activities, because now there is a longer term to perform them. On the contrary, that the hearing takes place on the scheduled date would affect our right of defense, for the reasons stated.

Our request is based on the Reasonableness Principle, provided in Article IV.1.4. of the Single Order Text of Law 27444 - Law of General Administrative Procedure, which guides the actions of the entire Public Administration, by which administrative decisions must maintain due proportion between the means to be employed and the public purposes that seek to be satisfied, as well as look for the solutions that are less burdensome to achieve it.

In application of this principle, the Commission is in full capacity to reschedule the hearing on the proposed dates, managing to satisfy the public purpose at your expense, without the need to affect our right of defense; What would happen if the date is maintained, according to what is indicated in point 1.

Being clear, then, that if the date indicated in the Notification were maintained, we would be unable to exercise a full and adequate defense and, given that we have a longer evidentiary period, the Commission would be affected by its investigation activities, we request the reprogramming of the date of the hearing, in application of the Principles of Due Process and reasonableness.

In order for the Commission to take into account the rescheduling date, we kindly request that you consider setting it in the week of March 18, 2019, because this extension will serve to gather the information that we could not gather by the closing of government; dates in which -in addition- the most important officials of the association will be present.

SO:

To you, Commissioners, we request that you keep the foregoing in mind and agree to our request.