

**MEXICO – ANTI-DUMPING DUTIES ON STEEL PIPES AND TUBES
FROM GUATEMALA**

Request for Consultations by Guatemala

The following communication, dated 17 June 2005, from the delegation of Guatemala to the delegation of Mexico and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with Mexico 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 AD Agreement) with respect to the definitive anti-dumping duties imposed by Mexico on imports of certain steel pipes and tubes originating in Guatemala and the investigation leading thereto.

The investigation leading to the imposition of the measures at issue was initiated by the Mexican investigating authority, the Ministry of the Economy ("Economía"), on 24 August 2001.¹ On 13 March 2002, Economía issued a preliminary resolution, in which it found that the imports under investigation were being dumped (at dumping margins of 3.41 per cent and 12.82 per cent for the two categories of pipes and tubes under investigation from known exporters, and 25.83 per cent and 26.59 per cent, respectively, from unknown exporters) and that these dumped imports were causing injury to the Mexican industry. Thus, Economía imposed provisional anti-dumping duties on those products at the above mentioned rates.² On 13 January 2003, Economía issued its final resolution, in which it found dumping margins of 29.93 per cent and 35.26 per cent for the two categories of pipes and tubes under investigation and that these imports were causing injury to the Mexican industry.³ Accordingly, using the lesser duty rule, Economía imposed definitive anti-

¹ Resolution Accepting the Application of the Interested Party and Declaring the Initiation of the Anti-Dumping Investigation on Imports of Standard Pipes and Tubes (merchandise currently classified under tariff classification 7306.30.01 and 7306.30.99 of the General Import Tax Law) exported from Guatemala, irrespective of the country of provenance, 24 August 2001 ("Initiation Resolution").

² Preliminary Resolution of the Anti-Dumping Investigation on Imports of Standard Pipes and Tubes (merchandise currently classified under tariff classification 7306.30.01 and 7306.30.99 of the General Import Tax Law) exported from Guatemala, irrespective of the country of provenance, 13 March 2002 ("Preliminary Resolution").

³ Final Resolution of the Anti-Dumping Investigation on Imports of Standard Pipes and Tubes (merchandise currently classified under tariff classification 7306.30.01 and 7306.30.99 of the General Import and Export Tax Law) exported from Guatemala, irrespective of the country of provenance, 13 January 2003 ("Final Resolution"), paragraphs 115, 273.

dumping duties on imports of certain steel pipes and tubes (the "subject products") from Guatemala at the rate of 25.87 per cent.⁴

Article 1 of the AD Agreement requires that "[a]n 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 [the AD] Agreement" [*footnote omitted]. In the light of this requirement, and based on Article VI of GATT and other provisions of the AD Agreement hereafter cited, Guatemala is deeply concerned about the following aspects of the measures imposed by Mexico and the investigation leading thereto:

- (a) Mexico failed to properly define the product under consideration and the like product. This appears to be inconsistent with Articles 2.1, 2.4, 2.6, 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 4.1, 5.4, 6.4 and 6.9 of the AD Agreement.
- (b) Mexico initiated the investigation without properly determining whether the application for the investigation contained a complete description of the allegedly dumped product, sufficient evidence of dumping, injury and a causal link, and without properly examining the accuracy and adequacy of the evidence provided in the application. This failure appears to be contrary to Article 5.2, 5.3, and 5.8 of the AD Agreement.
- (c) Mexico failed to provide in its notice of initiation of the investigation adequate information on the product involved, the basis on which dumping was alleged in the application, and a summary of the factors on which the allegation of injury was based. This failure appears to be contrary to Article 12.1 of the AD Agreement.
- (d) Mexico failed to properly define the relevant domestic industry and to use that definition consistently for the purposes of its analysis of injury and causation. This failure appears to be contrary to Articles 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 4.1, and 5.4 of the AD Agreement.
- (e) Mexico relied on facts available to determine the margin of dumping for the largest Guatemalan exporter of the subject products without properly following the procedures laid out in Article 6.8 and Annex II to the AD Agreement. This failure appears to be contrary to Article 6.8, Article 6.13, and Annex II, as well as to the requirements of Article 2.1, 2.2, and 2.4 to conduct a fair comparison between the export price and the normal value.
- (f) Mexico failed to disclose to the Guatemalan exporters that it had encountered problems at the on-the-spot investigation that warranted the use of facts available. This failure appears to be contrary to Article 6.2, 6.4, 6.7, 6.8 and 6.9 of the AD Agreement.
- (g) Mexico made adjustments to the export price for certain categories of expenses without making the symmetrical adjustments to the normal value for the same categories of expenses that were necessary to achieve a fair comparison between the normal value and the export price. This failure appears to be contrary to Article 2.1, 2.2 and 2.4 of the AD Agreement.

⁴ *Ibid.*, paragraph 275.

- (h) In its determination of injury and causal link, Mexico relied on dumping margins determined inconsistently with Article 2.1, 2.2 and 2.4 of the AD Agreement. This, in turn, appears to render Mexico's determination of injury and causal link inconsistent with Article 3.1, 3.2, 3.4, 3.5, 3.6 and 3.7 of the AD Agreement.
- (i) In its determination of injury and a causal link, Mexico failed to take into account relevant data relating to the period preceding its investigation, resulting in a determination of injury and a causal link that was not based on an objective examination or positive evidence. This failure appears to be inconsistent with Article 3.1, 3.2, 3.4, 3.5, and 3.7 of the AD Agreement.
- (j) Mexico's analysis of both the volume of the allegedly dumped imports and the effect of those imports on prices in the domestic market for like products, and the consequent impact of those imports on the domestic producers of such products, was not based on an objective examination or positive evidence. This failure appears to be contrary to Article 3.1 and 3.2 of the AD Agreement.
- (k) Mexico failed to properly evaluate all relevant economic factors and indices having a bearing on the state of the domestic industry. This failure appears to be inconsistent with Article 3.1, 3.4 and 3.7 of the AD Agreement.
- (l) Mexico's analysis of the condition of the domestic industry for the purpose of its injury and causation determinations failed to take into account data relating to all of the companies within the defined domestic industry. This failure appears to be inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.6, 3.7 and 4.1 of the AD Agreement.
- (m) Mexico's analysis of the causal link between dumping and injury failed to properly analyse other known factors, including, *inter alia*, changes in consumption, cost increases, differences in production methods, technology, productivity, decline in exports, and imports from other countries, that were at the same time causing injury to the domestic industry, and failed to ensure that injury caused by those known factors was not attributed to the imports under investigation. This failure appears to be contrary to Article 3.1, 3.2, 3.4 and 3.5 of the AD Agreement.
- (n) Mexico failed, before issuing its final resolution, to inform the Guatemalan exporters of the essential facts under consideration that formed the basis for Mexico's decision to apply definitive measures, including, *inter alia*, the reasons for Mexico's decision to resort to facts available and the basis for Mexico's definition of the like product. These failures appear to be contrary to Article 6.9 of the AD Agreement.
- (o) Mexico failed to disclose in its preliminary and final resolutions in sufficient detail the findings and conclusions reached on all issues of fact and law that were considered material by the Mexican authorities, including, *inter alia*, the reasons for Mexico's definition of the like product and its resort to facts available to calculate dumping margins for the largest Guatemalan exporter. These failures appear to be contrary to Article 12.2 of the AD Agreement.
- (p) Mexico failed to complete its investigation within 12 months of the initiation without making any finding of special circumstances that warranted extending the period of time to complete the investigation. This failure appears to be contrary to Article 5.10 of the AD Agreement.

- (q) Mexico failed to require the applicants to provide non-confidential summaries and to properly disclose information that was not shown upon good cause to be confidential or to disclose non-confidential summaries of confidential information. This failure appears to be contrary to Article 6.5 of the AD Agreement.
- (r) Mexico has applied the measure to products that were not covered by Mexico's investigation and for which Mexico has not made determinations of dumping, injury, and a causal link. This appears to be inconsistent with Articles 2.1, 2.6, 3.1, 3.2, 3.4, 3.5, 9.1, 9.3 and 18.1 of the AD Agreement.

Guatemala reserves the right to raise additional questions regarding the measures at issue during consultations.

It appears to Guatemala that the foregoing methodologies, calculations, comparisons, determinations and procedures made or used by the Mexican authorities in their investigation and imposition of the measures referred to above cannot be reconciled with Article VI of the GATT 1994, Articles 1 and 18.1 of the AD Agreement, and the specific provisions of the AD Agreement cited above.

Guatemala looks forward to receiving your reply to this request at your earliest convenience. I propose that the date and venue of these consultations be agreed between our two Missions.
