

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

Request for the Establishment of a Panel by Guatemala

The following communication, dated 6 February 2006, from the delegation of Guatemala to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 17 June 2005, Guatemala requested consultations with Mexico pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (the "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") regarding the definitive anti-dumping measures imposed by Mexico on imports of certain steel pipes and tubes from Guatemala and the investigation leading thereto.

Guatemala and Mexico held consultations on 15 July, 26 August, and 28 September 2005. These consultations unfortunately failed to resolve the dispute. Accordingly, Guatemala respectfully requests, pursuant to Article 6 of the DSU and Article 17.4 of the Anti-Dumping Agreement, that at its next meeting on 17 February 2006, the Dispute Settlement Body establish a panel with the standard terms of reference set out in Article 7.1 of the DSU to examine this matter and the claims set forth below.

The investigation leading to the imposition of the measures at issue was initiated by the Mexican investigating authority, the Secretaría de Economía ("Economía"),¹ on 24 August 2001.²

On 13 March 2002, Economía issued a preliminary resolution, in which it found that the imports under investigation were being dumped at margins of 3.41 per cent for standard galvanized pipes and tubes and 12.82 per cent for standard "black" pipes and tubes from known exporters, and 25.83 per cent and 26.59 per cent, respectively, from all other exporters, and that these dumped imports were causing injury to the Mexican industry.³ Thus, Economía imposed provisional anti-dumping duties on those products at the above mentioned rates.

¹ The Secretaría de Economía is now known as the Ministerio de Economía.

² *Resolución por la que se acepta la solicitud de parte interesada y se declara el inicio de la investigación antidumping sobre las importaciones de tubería estándar, mercancía clasificada en las fracciones arancelarias 7306.30.01 y 7306.30.99 de la Tarifa de la Ley del Impuesto General de Importación, originarias de la República de Guatemala, independientemente del país de procedencia*, 24 August 2001 (the "Initiation Resolution").

³ *Resolución preliminar de la investigación antidumping sobre las importaciones de tubería estándar, mercancía actualmente clasificada en las fracciones arancelarias 7306.30.01 y 7306.30.99 de la Tarifa de la Ley del Impuesto General de Importación, originarias de la República de Guatemala, independientemente del país de procedencia*, 13 March 2002 (the "Preliminary Resolution"), para. 197.

On 13 January 2003, Economía issued its final resolution, in which it found dumping margins of 29.93 per cent for standard galvanized pipes and tubes and 35.26 per cent for standard "black" pipes and tubes, and that these imports were causing injury to the Mexican industry.⁴ Accordingly, using the lesser duty rule, Economía imposed definitive anti-dumping duties at the rate of 25.87 per cent for both galvanized and "black" pipes and tubes from all exporters.⁵

Article 1 of the Anti-Dumping 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 Anti-Dumping] Agreement." In the light of this requirement, and based on Article VI of the GATT 1994 and the Anti-Dumping Agreement, Guatemala considers that Mexico's definitive anti-dumping duties and the investigation leading thereto are inconsistent with Mexico's obligations under the provisions of the Anti-Dumping Agreement hereinafter cited in the following respects:

Claims Relating to the Initiation of the Investigation:

- (a) The application for the investigation failed to contain sufficient evidence either of dumping, injury or a causal link to justify the initiation of an investigation. Mexico then initiated the investigation without properly determining whether the application for the investigation contained sufficient evidence of dumping, injury and a causal link to justify the initiation, and without properly examining the accuracy and adequacy of the evidence provided in the application. These failures are inconsistent with Articles 5.2, 5.3, and 5.8 of the Anti-Dumping Agreement.

Claims Relating to the Product under Consideration/Like Product:

- (b) In the Initiation Resolution, Mexico provided a definition of the product under consideration and the like product. During the course of the investigation, however, Mexico failed to adhere to and improperly changed its definitions of the product under consideration and the like product without any objective examination of positive evidence regarding these definitions. As a result, Mexico failed to conduct an unbiased and objective investigation and made findings of dumping, injury and a causal link with respect to products that were not properly investigated. These failures are inconsistent with Articles 2.1, 2.4, 2.6, 3.1, 3.2, 3.4, 3.5, 3.6, 4.1, 5.4, 6.4 and 6.9 of the Anti-Dumping Agreement.
- (c) As a result of the changes to the definitions of the product under consideration and the like product during the course of the investigation, Mexico applied its final measure to products that were not covered by its investigation and for which it had not made determinations of dumping, injury, and a causal link. This is inconsistent with Articles 2.1, 2.6, 3.1, 3.2, 3.4, 3.5, 9.1, 9.3 and 18.1 of the Anti-Dumping Agreement.

Claims Relating to the Determination of Dumping:

- (d) Mexico relied on facts available to determine the margin of dumping for the largest Guatemalan exporter of the subject products. Mexico lacked a basis under Article 6.8

⁴ *Resolución final de la investigación antidumping sobre las importaciones de tubería estándar, mercancía actualmente clasificada en las fracciones arancelarias 7306.30.01 y 7306.30.99 de la Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación, originarias de la República de Guatemala, independientemente del país de procedencia*, 13 January 2003 (the "Final Resolution"), paras. 115, 273.

⁵ *Ibid.*, paragraph 275.

of the Anti-Dumping Agreement to resort to facts available, and did so without properly following the procedures laid out in Article 6.8 and Annex II to the Anti-Dumping Agreement. These failures are inconsistent with Articles 6.6, 6.8, 6.13, and Annex II of the Anti-Dumping Agreement, as well as with the requirements of Articles 2.1, 2.2, and 2.4 of the Anti-Dumping Agreement to conduct a fair comparison between the export price and the normal value.

- (e) Mexico's report on the on-the-spot investigation of the largest Guatemalan exporter contains no grounds to conclude that Mexico had encountered problems that justified recourse to facts available under Article 6.8. Thus, Mexico failed to disclose to the Guatemalan exporters that it had encountered problems at the on-the-spot investigation that warranted the rejection of that exporters' data and the use of facts available, contrary to Articles 6.2, 6.4, 6.6, 6.7 and 6.8 of the Anti-Dumping Agreement. Mexico also failed to provide any subsequent adequate explanation of any problems it had encountered at the on-the-spot investigation or how those problems justified its resort to facts available. These failures are also inconsistent with Articles 6.2, 6.4, 6.7, 6.8 and 6.9 of the Anti-Dumping Agreement.
- (f) 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 was necessary to achieve a fair comparison between the normal value and the export price. This failure is inconsistent with Articles 2.1, 2.2 and 2.4 of the Anti-Dumping Agreement.

Claims Relating to the Determination of Injury and a Causal Link:

- (g) In its determination of injury and a causal link, Mexico relied on a period of investigation that ended significantly before the initiation of the investigation and therefore failed to take into account relevant data relating to the period immediately 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 is inconsistent with Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement.
- (h) Mexico improperly limited its injury analysis to data relating to six-month periods each year within the period of investigation, resulting in a determination of injury and causal link that was not based on an objective examination or positive evidence. This failure is inconsistent with Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement.
- (i) Mexico selectively and inconsistently used data relating to different domestic producers, products and groups or ranges of products, and time periods, in its analysis of the volume and price effects of the imports under investigation, of the impact of those imports on investigation on the domestic industry, and of the causal link, resulting in a determination of injury and causal link that was not based on an objective examination or positive evidence. These failures are inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.6 and 4.1 of the Anti-Dumping 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. These failures are inconsistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement.

- (k) Mexico failed to evaluate properly all relevant economic factors and indices having a bearing on the state of the domestic industry listed in Article 3.4, including, *inter alia*, utilization of capacity, inventories, employment, wages, and growth. In addition to its failure to consider properly particular listed factors, Mexico's overall analysis of the factors listed in Article 3.4 did not conform to the standards of Article 3. These failures are inconsistent with Articles 3.1 and 3.4 of the Anti-Dumping Agreement.
- (l) Mexico's analysis of the causal link between dumping and injury failed to analyse properly 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 is inconsistent with Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement.

Claims Relating to Procedural Matters:

- (m) Mexico failed, before making its final determination, to inform the Guatemalan exporters of the essential facts under consideration that formed the basis for its decision to apply definitive measures, including, *inter alia*, the facts relating to the decision to resort to facts available and to the definitions of the product under consideration and the like product. This failure is inconsistent with Article 6.9 of the Anti-Dumping Agreement.
- (n) 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 product under consideration and the like product and its resort to facts available to calculate dumping margins for the largest Guatemalan exporter. These failures are inconsistent with Article 12.2 of the Anti-Dumping Agreement.
- (o) Mexico failed to require the applicants to provide non-confidential summaries and to disclose properly information that was not shown upon good cause to be confidential or to disclose non-confidential summaries of confidential information. These failures are inconsistent with Article 6.5 of the Anti-Dumping Agreement.

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