

Original: English

**MEXICO – MEASURES AFFECTING TRADE IN LIVE SWINE**

Request for Consultations by the United States

The following communication, dated 10 July 2000, from the Permanent Mission of the United States to the Permanent Mission of Mexico and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the Government of Mexico pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement) regarding Mexico's 20 October 1999 definitive anti-dumping measure on live swine for slaughter, merchandise classified under tariff classification 0103.92.99 of the General Import Law, exported from the United States of America, independently from the country or origin (Resolución final de la investigación antidumping sobre las importaciones de cerdo para abasto, mercancía clasificada en la fracción arancelaria 0103.92.99 de la Tarifa de la Ley del Impuesto General de Importación, originarias de los Estados Unidos de América, independientemente del país de procedencia), and actions by Mexico in the conduct of the anti-dumping investigation resulting in this measure.

In addition, my authorities have instructed me to request consultations with the Government of Mexico pursuant to Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures, Article 19 of the Agreement on Agriculture and Article 14 of the Agreement on Technical Barriers to Trade, to the extent these articles incorporate Article XXIII of the GATT 1994, with respect to various measures affecting trade in live swine, merchandise classified under tariff classification 0103 of the General Import Law, exported from the United States of America.

The United States considers that Mexico made a determination of threat of material injury in contravention of Articles 3 and 12 of the Anti-Dumping Agreement, including: by failing to evaluate all relevant economic factors and indices having a bearing on the state of the industry; by failing to perform an objective examination of the consequent impact of imports found to be dumped on domestic producers of the like product; by failing to determine that there was a clearly foreseen and imminent change in circumstances that would create a situation in which dumping of imports of live swine of a weight more than or equal to 50 kilograms and less than 110 kilograms would cause injury; and by failing to determine that material injury would occur unless protective action were taken.

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The United States also considers that Mexico failed to comply with the requirements of Article 6 of the Anti-Dumping Agreement, including: by failing to provide respondent US exporters with timely opportunities to see and prepare presentations on the basis of all information used by the investigating authority that is relevant to the anti-dumping investigation; and by failing to inform respondent US exporters, before the final determination was made, of the essential facts under consideration which form the basis of Mexico's decision to apply definitive measures.

Mexico also appears to be restricting or prohibiting the entry of US live swine through three sets of measures, other than anti-dumping duties, in a manner inconsistent with its obligations under other WTO Multilateral Agreements on Trade in Goods. First, the Government of Mexico appears to have prohibited the importation of certain swine if they exceed 110 kilograms in weight. Second, notwithstanding the apparent ban on importation, Mexico also appears to be maintaining sanitary restrictions, including inspection and quarantine measures, on the importation of swine weighing 110 kilograms or more, which are applied to neither smaller imported swine nor domestic Mexican swine. The United States considers such application of more restrictive sanitary measures against larger imported swine to constitute arbitrary or unjustified discrimination and that these measures are maintained without sufficient scientific evidence and are not based on a risk assessment.

Third, the United States further understands that Mexico may have adopted technical regulations, not constituting sanitary measures, that are applicable to imported swine but not to domestic swine.

Accordingly, in addition to the provisions of the Anti-Dumping Agreement previously noted, the United States considers that Mexico's measures appear to be inconsistent with the obligations of Mexico under the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Agriculture, the Agreement on Technical Barriers to Trade and the General Agreement on Tariffs and Trade 1994. The provisions of these agreements with which these measures appear to be inconsistent include the following:

- (1) Agreement on the Application of Sanitary and Phytosanitary Measures, Articles 2.2, 2.3, 3, 5.1, 5.6, 7 and 8;
- (2) Agreement on Agriculture, Article 4.2;
- (3) Agreement on Technical Barriers to Trade, Articles 2 and 5;
- (4) General Agreement on Tariffs and Trade 1994, Articles III:4 and XI:1.

Mexico's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

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