GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/W/206
12 April 1989

Special Distribution

Committee on Anti-Dumping Practices

Original: Spanish

ANTI-DUMPING LEGISLATION OF MEXICO

The following communication has been received from the delegation of Mexico in response to questions put by the delegations of the United States, the EEC and Canada[1] on the anti-dumping legislation of Mexico.[2]

I. INTRODUCTION

As we have informed the Committee at earlier meetings, Mexican anti-dumping legislation comprises three basic instruments: the Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States ("Regulatory Act"), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade Enacted as Mexican Law ("Enacted Agreement") and the Regulations Against Unfair International Trade Practices ("Regulations").

The Regulatory Act is an instrument of general application in terms both of measures (tariffs, licences, safeguards, subsidies/countervailing duties, anti-dumping measures, etc.) and of countries (countries that are not contracting parties, contracting parties and parties to the Anti-Dumping Code).

The text of the Enacted Agreement is identical to that of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, as adopted by the Chamber of Senators of the Congress of the Union and enacted, for due observance throughout Mexican territory, pursuant to the pertinent constitutional provisions. Unlike the Regulatory Act, the Enacted Agreement applies solely and exclusively to the products of countries parties to the Anti-Dumping Code.

The Regulations are intended to implement the provisions relating to anti-dumping measures of the Regulatory Act and/or the Enacted Agreement, the application of the latter depending on the international obligations entered into by Mexico with the trading partner in question (a country not belonging to GATT, a contracting party, a country that is a party to the Code).

[1] See, respectively, ADP/W/192, 200 and 202

[2] Documents ADP/1/Add.27 and Suppl. 1

As may be seen below, while the Regulations are not a textual repetition of the provisions of the Anti-Dumping Code, since their contents also cover other types of question such as those mentioned above with regard to the measures and countries concerned, it is also the case that the Regulations were prepared and amended in such a way that none of their provisions is in itself contrary to Mexico's undertakings with respect to countries parties to the Anti-Dumping Code.

II. REPLIES

A. Regulatory Act Implementing Article 131 of the Constitution

Articles 1 and 2.
(EEC question No 1).

The answer is yes. Under the Foreign Trade Act, the term "countervailing duties" refers to both countervailing duties and anti-dumping duties.

Article 5.V.
(Questions 6 (a) of Canada and 2 of the EEC)

The regulatory measures or restrictions referred to in Article 1.II (a) to (d) in relation to the unfair practices to which the cases provided for in Article 5.V refer, are applicable to the products of countries with regard to which Mexico does not have any international obligations regarding anti-dumping.

For countries parties to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("the Agreement" or "the Code"), the provisions of the Enacted Agreement apply. Consequently, for such cases, the remedy against dumping and/or subsidies established by the Regulatory Act is the application of countervailing duties pursuant to the ad hoc procedure provided by the Act and the Regulations.

Article 5.VI.
(EEC question No. 2)

Article 5.VI refers to safeguards, a situation which is by definition outside the scope of an analysis of anti-dumping matters.

Article 7.I(a)
(EEC question No. 3)

The answer is no. The term "highest comparable export price" refers solely to exports of the country of origin.

Article 8
(United States question No.1).

Mexico uses the injury standard established in the Anti-Dumping code or, which amounts to the same thing, the Enacted Agreement.

The concept of "stability of domestic production" is laid down in the second paragraph of Article 131 of the Mexican Constitution, and it is one of the aspects which the Executive is called upon to protect with the powers entrusted to him in the sphere of foreign trade.

The concept is set forth in Article 1 of the Foreign Trade Act, and is precisely one of the Act's objectives: to regulate and foster the stability of national production.

The reference to the concept in Article 8 of the Act is to explain the legal grounds for payment of a countervailing duty, inter alia so as not to affect the stability of domestic production.

The concept must be understood in the context of Article 15 of the Foreign Trade Act and Article 3 of the Anti-Dumping Code, in other words, stability of national production that is affected by material injury caused by imports under dumping conditions.

The concept in isolation, that is to say not placed in the above context, would be ambiguous. Therefore, Article 15 of the Act, the definition of injury in the Regulations (Article 1:XIII) and the determination of injury in the Anti-Dumping Code (Article 3) together form the context in which the concept has its meaning.

Article 8.III
(United States question No. 2)

There is no contradiction between Article 8.III of the Regulatory Act and VI:5 of the General Agreement, since in the application of the former the same practice is not penalized by two different measures.

Under Article 8.III, where an unfair practice is found to combine a dumping ingredient and a subsidy ingredient, the remedy is a countervailing duty which counters the dumping ingredient (anti-dumping measure) and also counters the subsidy ingredient (anti-subsidy measure).

Article 9
(EEC question No.4)

The ex officio procedure initiated on its own initiative by the administrative organ, consistent with Article 5:1 of the Code, is the procedure which is carried out in the absence of a complaint when the authority observes that imports are taking place under circumstances of unfair practices that cause or threaten to cause injury to domestic production. In such a case there is obviously a prior investigation.

The spirit of the domestic legislation, which includes the provisions of the Code in this respect, is that self-initiated action will be taken only in exceptional cases.

Article 10
(Questions 3 of the United States, 1 (a) of Canada and 5 of the EEC)

Article 10 of the Foreign Trade Act quantifies what Mexico considers to be representative domestic production. In quantifying such representative domestic production, Mexico is seeking to limit the authority's discretion to determine the cases where representativety exists, thus enhancing transparency and legal security for the parties involved in an investigation. This contrasts with the provisions and practices of other countries, which initiate and apply measures regardless of the percentage of domestic production represented in the case and only if there is no opposition from the majority of domestic producers.

Under Article 10 a complaint may be submitted to the Ministry of Trade and Industrial Development when the domestic producers represent at least twenty-five per cent of domestic production of the goods in question. This twenty-five per cent must be understood as a minimum, and is applicable in cases of initiation of an investigation. The existence of this figure means that complaints may be dismissed immediately when the producers do not attain this percentage. Nevertheless, the fact that this requirement is satisfied does not mean that the investigation requested will automatically be initiated.

In the case of producers' organizations, the twenty-five per cent requirement is not relevant, as is clear from the fact that under the legislation governing Chambers of Commerce and Chambers of Industry, such organizations may be formed only if they actually group a representative proportion of domestic producers.

Neither the Regulatory Act nor the Enacted Agreement provide for situations where the majority of domestic producers oppose the initiation of an investigation. In any event, with regard to countries parties to the Code, the decisive factor for deciding on the admissibility of the complaint is whether the latter is presented by, or on behalf of, the domestic industry affected, as stipulated and defined in Articles 5 and 4 of the Code, respectively, which are identical to the same articles in the Enacted Agreement.

Article 10.VII.
(Questions 4 of the United States and 4 (c) of Canada.

There is no difference between "injury" and "material injury". In the case of the Mexican legislation, this would be a mere semantic difference ("injury" vis-à-vis "material injury"). Mexico applies the injury standard required by the Anti-Dumping Code because that is its own law, with the complementary application of the provisions of the Foreign Trade Act and of the Regulations.

Article 11
(Questions 5 of the United States, 1 and 2 (a) of Canada and 6 of the EEC)

Article 11 of the Act does authorize the Mexican authorities to make a provisional decision within five working days of notifying the complainants that their complaint has been acknowledged in order (see also Article 13 of the Regulations).

It should therefore be pointed out that the decision taken within that period will not necessarily be to establish a provisional countervailing duty (anti-dumping duty). Article 11 states that this is only done "if appropriate", as is further borne out by Articles 13 and 16 of the Regulation.

This period of five working days is an emergency period. The clearest evidence of this is the use that has actually been made of it in practice. In none of the twenty-five cases published in the Diario Oficial, with some kind of resolution, has there been a provisional decision (either simply to initiate an investigation or else to impose an anti-dumping duty) within the period under discussion. From the date of submission of the complaint, a process of investigations lasting several months has been carried out to determine whether it could be acknowledged as being in order. By way of example, mention may be made of the case of caustic soda, where the period that elapsed between the date of submission of the complaint and the issuance of the provisional decision was four months: 3 October 1986 - 29 January 1987; or the case of monoisopropylamine: 27 February 1987 - 10 July 1987, or virtually five months. This is borne out by all the cases published in the Diario Oficial.

In other words, the period of five working days is provided on account of the size and sensitiveness of the Mexican economy, but in practice it has not been applied.

Furthermore, this provision of Article 11 is not considered incompatible with the Code, since Article 6:9 of the Code specifies that the provision of extensive possibilities of defence to parties concerned is not intended to prevent the authorities from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings, whether affirmative or negative, and so forth.

This emergency period exists in the legislation of other parties, such as the EEC regulations, (Article 11, paragraph 3):

Article 12
(EEC question No. 7)

The purpose of this stage of the procedure is to increase the objectivity of the investigation, by enabling the authority to acquire further particulars from interested parties. Additional information is invited and accepted from the complainants, importers and exporters or any other concerned persons. Complainants are usually asked for further details through questionnaires; importers are asked for information only if they appear; and exporters are asked for information through questionnaires.

Within the stipulated period of thirty days, the secretariat reviews the facts on which its provisional decision was based, as well as the additional information supplied as appropriate, by the producers, importers and exporters affected or any other concerned party (Article 20 of the Regulations).

The Ministry of Trade and Industrial Development makes a preliminary determination concerning injury or threat of injury on the basis of Article 15 of the Act. Under Article 18 of the Regulations, a resolution establishing a provisional countervailing duty must, where applicable, give a description of the injury sustained or likely to be sustained by the domestic industry.

Article 13
(Questions 2 (b) of Canada and 8 of the EEC).

The period established in Article 13 of the Act is a maximum period within which the final determination must be made. This time frame established by the Act does not conflict with the four-month period established in Article 10 of the Code.

As in the review stage, the submission of information by the exporters concerned is duly taken into account throughout the investigation process.

Article 14
(EEC question No. 9)

Under Article 14 the Federal Executive may agree with other countries that the injury test should be applied for their products in Mexico "provided that reciprocal arrangements exist in those countries for resolving questions pertaining to goods exported from Mexico to them".

It is the understanding of the Government of Mexico that the Anti-Dumping Code is an agreement within the meaning of Article 14 of the Regulatory Act, and consequently it applies the injury test to all parties to the Code without any need for the conclusion of a bilateral agreement in that respect.

It should be recalled that the Code is an integral part of Mexican legislation, and that under the Code all its parties must apply the injury test among themselves.

Article 19
(Questions 6 of the United States, 2(c) and 3(a) of Canada and 10 of the EEC).

Pursuant to Article 19 of the Act, an anti-dumping duty is removed when it is found the unfair international trade practice has ceased. Since, for the application of the countervailing duty, one of the elements to be considered is the existence of injury, the disappearance of the injury removes one of the reasons for continuing to impose the duties. It should be recalled that Article 32 of the Regulations provides for the review of the final determination either at the request of a party or ex officio, annually or at any time, if there are justified causes for so doing.

The undertakings mentioned in Article 19 refer to the dumping and subsidy practices. The provisions of Article 7 of the Enacted Agreement

apply to countries parties to the Code. Such undertakings are considered and accepted on a case-by-case basis.

Articles 24 and 25
(EEC questions Nos. 11 and 12)

Administrative appeal proceedings for review as provided for in the Federal Taxation Code may be instituted only by the importers of the goods affected by the duties. Exporters, as interested parties, may invoke Article 32 of the Regulations.

B. Regulations against unfair international trade practices

Article 1
(Question No. 4 of Canada and 13 of the EEC)

With regard to Article 1.VIII of the Regulations, it should be borne in mind that injury to national production may exist even in the case of a single producer or of a number of producers, depending on the proportion of production they represent.

For parties to the Code, the definition of the term "domestic production" is given in Article 4 of the Enacted Agreement.

Article 11
(EEC question No. 14)

To issue a provisional resolution, the authority must check that the complaint fulfils the requirements of Article 10 of the Act and Article 5 of the Code. It should be remembered that in accordance with Article 11 of the Act and 16 of the Regulations, the provisional resolution may be of two kinds: a mere declaration of initiation of an investigation, or a provisional determination of a countervailing duty. The authority must check that the requirements of Article 10 of the Code are satisfied.

Article 21 of the Regulations contains the provisions whereby the secretariat must verify the information, including verifications in the country of origin or provenance of the goods, if the authorities of the government concerned so agree and, where applicable, the producer of the goods consents to such verification.

Neither the Act nor the Code (see Article 6.9) establish an obligation to disclose the main elements of the findings before measures are taken.

Article 30 of the Regulations provides that the parties concerned may request that the secretariat hold a conciliation meeting.

See also the reply concerning Article 12 of the Regulatory Act.

Article 12
(EEC question No. 15)

See the reply concerning Article 14 of the Regulatory Act.

Article 13
(Canada question No. 1(b))

See the reply concerning Article 11 of the Regulatory Act.

Article 15
(EEC question No. 16)

Article 15 of the Regulations refers only to ex officio investigations. In such cases, as well as in ordinary cases initiated by a complaint, in accordance with Article 17(e) and 18(I) of the Regulations, public notice is given to exporters to appear in order to defend themselves. There is no limiting period for the exercise of this right, since they may appear until such time as a final countervailing duty is established (Article 30 of the Regulations). The fifteen-day period stipulated in Article 15 is not a maximum, as suggested in the question, but rather a minimum period for the parties. The Committee's recommendation in this regard is observed, and the provisions of the above-mentioned Article 30 go even further than the recommendation. When questionnaires are sent to exporters they are informed of their procedural rights and obligations.

Article 16
(EEC question No. 17)

The provisional determination provided for in Article 16(b) of the Regulations may be made if the secretariat has sufficient information to assume the existence of unfair practices and if the import operation presents such features as, in the judgement of the secretariat, constitute injury or threat of injury to domestic producers of identical or similar goods.

The secretariat has the power to collect for itself information other than that supplied by the complainant, and in practice it uses this power so as to proceed on the basis of reliable evidence.

Article 20
(EEC question No. 18)

Under Articles 17 and 18 of the Regulations exporters are given notice to appear before the secretariat to claim any rights they may allege in the matter.

The fifteen-day period provided in Article 15 of the Regulations is only a minimum for the benefit of the parties.

See also the reply concerning Article 12 of the Regulatory Act.

Article 28
(EEC question No. 19)

The reply is yes.

There is no express provision in the Act, Regulations or Code (see Article 8.5) concerning the holding of a disclosure conference at which the authority must give details of the methods and techniques applied for the calculation of the countervailing duties. It is enough merely to give the reasons or grounds on which its conclusions and findings are based.

It should be mentioned that Article 22 of the Regulations stipulates the methods for the calculation of countervailing duties, and that in any event, generally accepted accounting principles shall be followed.

Article 32
(EEC question No. 20)

In the hypothesis raised, the authority, by extensive application of Article 20 of the Regulations, once the justification for the adjustment of the anti-dumping duty has been established, would refund the excess amount within a period of ten days from the date of publication of the resolution in question.

Institutional arrangements
(Canada question No. 5)

There are three competent authorities with regard to unfair practices: (a) the Ministry (secretariat) of Trade and Industrial Development which conducts the administrative investigation (Article 2.II of the Act); (b) the Ministry of Finance and Public Credit, which collects, where appropriate, the countervailing duties at customs level (Articles 11 and 13 of the Act); and (c) the Commission on Tariffs and Trade (CACCE), which is a consultative interministerial collegiate body to which draft final resolutions are referred (Articles 3 of the Act and 28 of the Regulations).

The CACCE acts as a "screen" for final resolutions. It is made up of the following institutions: Ministry of Trade and Industrial Development, Ministry of Finance and Public Credit, Ministry of Programming and Budget, Ministry of Agriculture and Water Resources, Ministry of Fisheries, Ministry of Energy, Mines and Semi-Public Industry, and Bank of Mexico.

The system existing in Mexico is appropriate in view of the division of labour among the competent authorities responsible for administering it.